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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 18 of the provisional agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement submitted by the Association for World Education,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10296 (E)

Enhancing the capacity of human rights bodies to deal with internal armed conflicts

1. Today all the United Nations bodies face a growing number of intra-State armed conflicts. As the Secretary-General wrote in his report to the Commission on Human Rights dealing with the fundamental standards of humanity (E/CN.4/1998/87):

> "At the present time, it is often situations of internal violence that pose the greatest threat to human dignity and freedom. The truth of this observation is borne out in many countries around the world. The reports prepared by or for United Nations human rights bodies repeatedly draw attention to the link between human rights abuses and ongoing violence and confrontation between armed groups and government forces, or simply between different armed groups" (para. 8). "These situations are characterized by the existence of an armed challenge to the Government, in the form of one or more armed groups taking up arms in pursuit of, broadly speaking, political objectives. These objectives might include demands for more autonomy or even secession for particular ethnic, religious or linguistic minorities within the State concerned, overthrowing the existing Government, rejection of the existing constitutional order, or challenges to the territorial integrity of the State. In other situations, where an existing Government collapses or is unable or unwilling to intervene, armed groups fight among themselves, for example, for the right to establish a new Government or to ensure the supremacy or continuation of their own particular political programme" (para. 19).

2. The United Nations Security Council, and when it is unable to act, the United Nations General Assembly, through the "Uniting for Peace" resolution (377 (V)), are the principal bodies designated by the Charter to deal with conflict. However, when the Charter was written, during the Second World War, the primary aim was to prevent aggression and war between States. Both the Security Council and the General Assembly have had great difficulty dealing positively with intra-State conflicts.

3. Therefore, the United Nations human rights bodies, in particular the Commission on Human Rights and the Sub-Commission, have become the forums in which ongoing conflicts are discussed owing to the large number of human rights violations which are an inherent part of armed conflicts. The human rights bodies were not originally designed to deal with situations of armed conflict or as forums where conflict resolution compromises in intra-State conflicts could be reached. However, as the Secretary-General pointed out, it is in such conflicts where there are consistent patterns of human rights violations including torture, summary executions, arbitrary detention, slavery, forced displacement of populations, as well as limitations placed on freedom of expression, assembly, religious practice, etc.

4. Non-governmental organizations (NGOs) have increasingly become the avenue by which attention is called to intra-State conflicts at the Commission on Human Rights and the Sub-Commission. There has been a trend since the 1980s in the Commission and Sub-Commission to have NGO oral presentations made by persons directly related to the conflict as they have first-hand experience. Some NGOs believe that such witnesses are particularly important in those conflicts where there is little media coverage.

5 There is, however, some ambiguity in having partisan presentations made in the name of an NGO in consultative status as that NGO may, in fact, have no overall policy on that particular conflict beyond being against violations of human rights. Thus, the image of some NGOs becomes associated in the minds of people, Governments and other NGOs as being the spokesperson or supporter of a particular faction in an armed conflict. At times the NGO is seen as an informal spokesperson for a Government, more often, as a supporter of an armed opposition.

6 To overcome this ambiguity, it has been proposed that representatives of armed movements be able to speak in their own name to the Commission on Human Rights and the Sub-Commission. At the start of the first special session of the Commission on Human Rights devoted to the former Yugoslavia in 1992, an NGO in consultative status made a request of the Bureau of the Commission that various NGO groups from the former Yugoslavia, some of which had close contacts or ties with armed groups, be allowed to speak under their own name. The request was discussed by the Bureau and was refused as there was no previous Economic and Social Council resolution granting such a right. Therefore, groups of the former Yugoslavia were accredited by a number of NGOs present so that these groups could participate in the session and present their views. The same situation repeated itself at the special session on Rwanda in May 1994 and at the recent special session on East Timor in 1999.

7 There have also been repeated presentations by people involved in armed conflicts to regular sessions of the Commission on Human Rights and the Sub-Commission. Nevertheless, this practice of accreditation of persons in intra-State armed conflicts has led to threats against NGOs by government representatives as well as demands for action by the Economic and Social Council Committee on NGOs to suspend or withdraw consultative status in such cases. The most recent example is Christian Solidarity International and the Government of the Sudan concerning the accreditation of Dr. John Garang of the Sudan Peoples' Liberation Movement to the 1999 session of the Commission.

8 Such governmental pressures decrease the relations of confidence and fairness necessary for fruitful Government-NGO relations. As the withdrawal of the consultative status from an NGO is the most severe sanction which the Economic and Social Council can take against an NGO in consultative status, the proceedings against Christian Solidarity International were followed closely by the NGO community. A dossier analysing the workings of the Committee on NGOs at its June and September 1999 meetings and the Council debates and decisions in July and October 1999 was prepared by the Association for World Education and was widely distributed. The proceedings of the Committee on NGOs were generally considered to be flawed and to be a serious obstacle to constructive UN-NGO collaboration. There is a certain irony in the fact that hardly two months after the withdrawal of consultative status from CSI because of its accreditation of John Garang, the Government of the Sudan and the Sudanese Peoples' Liberation Movement signed a far-reaching humanitarian agreement at the Palais des Nations on 15 December 1999.

9 The basic issue is to find the proper forum and modality for dealing with intra-State conflicts by having the main protagonist present. One possibility is to build upon the precedent of the Working Group on Indigenous Populations. There, participants need not be from an NGO in consultative status but can represent a tribe, a tribal organization, a clan, etc. There have been

participants from groups which are in armed conflict with member Governments. Governments, of course, have the right of reply to statements made by these representatives of indigenous or tribal armed groups. There have been occasions when government and armed-group representatives have met together informally around the Working Group to understand better each other's positions. NGO representatives have also served as go-betweens. In at least one case, this has led to a ceasefire, which still holds.

10. There is also the precedent of giving armed movements special observer status, which was the case for the African National Congress of South Africa, the Palestine Liberation Organization and the South West Africa People's Organization (SWAPO) of Namibia.

11. At this time, when the Commission on Human Rights and NGOs are considering seriously the means of enhancing the effectiveness of the mechanisms of the Commission and the Sub-Commission, it is important to discuss the following:

(a) The growing number of intra-State conflicts with serious, continuing violations of human rights;

(b) The modalities by which representatives from armed groups can participate to make their position known;

(c) The most effective role for NGOs to play in such situations.

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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF RELIGIOUS INTOLERANCE

Written statement submitted by the Association of World Citizens, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31

[20 December 1999]

GE.00-10301 (E)

The ban on the Falun Gong spiritual practice and subsequent government repression

1 The banning of the spiritual practice Falun Gong by the security authorities of the People's Republic of China on 22 July 1999, followed by subsequent widespread repression merits close attention from the Commission on Human Rights as the ban clearly contravenes international law

2 The Ministry of Civil Affairs of the People's Republic of China banned the Research Society of Falun Dafa and Falun Gong practice as "it had not been registered as required by the law and had engaged in illegal activities, advocating superstition and spreading fallacies, hoodwinking people, inciting and creating disturbances and jeopardizing social stability" Then, the Ministry of Public Security issued a notice which "prohibits anyone from hanging up scrolls, pictures, insignias or other signs in any place publicizing Falun Gong No one is allowed to distribute books or other publications, audio-visual material or any other propaganda products in any place" The Ministry also prohibits any practice of Falun Gong such as "gatherings, parades, demonstrations in the form of sit-ins or by appealing to the higher authorities for help" The notice prohibits all activities that "incite disturbances of public order by creating fabrications and distortions of fact, intentionally spreading rumours or by any other means" (China Daily, 23 July 1999)

3 The issue of the ban as a violation of freedom of belief was raised in an oral statement on 4 August 1999 to the Sub-Commission on the Promotion and Protection of Human Rights, the first possible occasion for a full presentation to a United Nations human rights body after the 22 July ban This statement, by the Association of World Citizens, stressed that "We in the human rights community have a duty to uphold the norms set out in universally recognized declarations and covenants We also have a duty to help the Governments of States to find proper solutions when, through fear and bad advice, they take short-sighted measures which are harmful and destructive of social harmony The banning and repression of Falun Gong is one such destructive measure"

4 The 22 July 1999 ban of Falun Gong, without a trial or prior public hearings, is a direct violation of article 18 of the International Convenant on Civil and Political Rights, signed but not yet ratified by China, and of the spirit of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

5 In order to counter criticism that the ban on Falun Gong was not legal under Chinese law, the Chinese Parliament (National People's Congress Standing Committee) passed a law at the end of October to ban and punish cults, it passed by 114 votes for, 2 abstentions, and no votes against The judicial system followed immediately with its interpretation of the law The legislation was hailed in the government media as a "powerful new weapon to smash evil cultist organizations, especially Falun Gong Courts, prosecutors, police, and administrative, judicial departments should be on full alert against cult activities and deal with them rigorously in accordance with the law" (China Daily, 1 November 1999)

6 However, the definition of cult in the new Chinese law is vague and not in keeping with the generally recognized limitations of international human rights law Article 1 (3) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

Religion or Belief does state that "*Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others*". The Chinese Government has made repeated statements that the Falun Gong is a threat to public order and the health of practitioners and that the ban protects the rights of other citizens. Nevertheless, the trials of Falun Gong practitioners held to date have been under conditions lacking fairness, lacking time for the defence to prepare evidence, and lacking the presence of international observers. Being a menace to "public safety, order, health and morals" can be interpreted very widely if there is no judicial restraint. Thus there is a danger that the Public Security Department forces can strike out arbitrarily at people doing other meditation exercises, or holding spiritual beliefs concerning reincarnation, spirits, energy fields, or cycles of human evolution. Already, other movements and practices have been banned under this legislation. As was intended, the October law has created a general atmosphere of fear and suspicion.

7 Subsequent to the 22 July 1999 ban, there has been a spiral of repression including:

- Widespread arrests and detention without trial;
- Credible reports of torture and other cruel and degrading treatment of Falun Gong practitioners. There seems to be widespread and exceptionally cruel treatment of women Falun Gong practitioners (see Amnesty International, Reports of Torture and ill-treatment of Followers of the Falun Gong, ASA 17/54/99, 22 October 1999);
- Placement of Falun Gong practitioners in "reform through labour" camps under administrative procedures allowing such placement without trial and for an indefinite time period;
- Trials of Falun Gong practitioners under conditions which do not meet internationally recognized standards of judicial fairness or the independence of lawyers and judges;
- The confiscation, burning or other forms of destruction of millions of Falun Gong books, videos and cassette tapes;
- Widespread harassment of Falun Gong practitioners through loss of jobs, housing, and the right to schooling. Such harassment is particularly severe against government civil servants who have practised Falun Gong.

8 Therefore, information on the ban and subsequent repression has been sent for action to the following Special Rapporteurs of the Commission on Human Rights:

- Mr. Abdelfattah Amor, Special Rapporteur on religious intolerance;
- Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women;

- Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers,

- Mr. Abid Hussain, Special Rapporteur on freedom of opinion and expression,

- Sir Nigel Rodley, Special Rapporteur on the question of torture,

- Mr. Kapil Silbal, Chairman-Rapporteur of the Working Group on Arbitrary Detention,

- Ms. Katarina Tomasevski, Special Rapporteur on the right to education.

9. Despite different forms of governmental repression, many Falun Gong practitioners have refused to give up their practices. Others have appealed publicly in a non-violent way to the Government for their protection under articles 36, 37 and 38 of the Chinese Constitution as well as invoking international human rights instruments. Practitioners have travelled to Beijing to appeal, including silent protests at Tiananmen Square and in some 30 other cities. Government officials consider such demonstrations as placing them under "siege" and by their count, there have been over 300 "sieges". In response to these non-violent demonstrations, the Chinese security authorities have stepped up their pressure, including the arrest of persons doing the meditation exercises in their homes. As the editorial in the China Daily states "The fight against Falun Gong is a long-term and arduous one. The nature of the cult is heretical, its energy, stubbornness and destructive power all lie in heresy. This is a major political issue that concerns the fate of the nation and the people." (China Daily, 6 November 1999)

10. In opposition to all the heresy hunters, be they governmental or ecclesiastical, the Commission Human Rights - in the name of the international community - should reaffirm that freedom of thought, conscience, religion or belief and the elimination of intolerance and of discrimination based on religion or belief are of a fundamental character and derive from the inherent dignity and worth of the human person. Lifting the 22 July 1999 ban by the Government of the People's Republic of China on the Falun Gong would be an important step in conformity with the provisions and universal values of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 4 of the provisional agenda

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10308 (E)

The 1990 "Cairo Declaration of Human Rights in Islam" (CDHRI) is neither a "regional" instrument nor a United Nations "international instrument"

1. For some time, the Association for World Education has expressed its deep concern in regard to any United Nations body quoting from a religious, non-United Nations "universal instrument", either in a resolution or otherwise - as if it was official. Two examples are noteworthy: Sub-Commission resolution 1998/17, and Sub-Commission resolution 1999/14.

2. Resolution 1998/17, "Situation of women in Afghanistan", affirms that the Sub-Commission is "[f]ully aware that in the Cairo Declaration of Human Rights in Islam, adopted by the Organization of the Islamic Conference in 1990, guarantees the rights of women in all fields". This cannot be affirmed, as this document establishes Sharia law as "the only source of reference" (art. 25) for human rights in Islamic countries, thus giving it supremacy over all the universal international instruments. Regarding the "rights of women", article 6 (a) of the Cairo Declaration merely states: "Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform ...".

3. In resolution 1999/14, "The situation of women and girls in Afghanistan", the Sub-Commission "[a]gain call[ed] upon Muslim religious leaders and scholars to give special attention to the extremely difficult and unprecedented situation of women in Afghanistan, and to use their authority and their knowledge with a view to bringing the policies and practices of the Taliban into line with the true spirit of Islam and the principles of human rights and fundamental freedoms". This appeal is perfectly legitimate, but the Sub-Commission had already interpreted article 6 (a) of the Cairo Declaration relating to women in its resolution 1998/17.

4. We have pointed out that the 1990 "Cairo Declaration of Human Rights in Islam" had been published by OHCHR in its *Human Rights: A Compilation of International Instruments. Volume II: Regional Instruments*. Geneva, December 1997 (volume I, Parts I and II, contain the *Universal Instruments*). A year after our first inquiry as to how this inclusion could have occurred, we are still awaiting an explanation as to when, why, and by whom such an important decision was officially made by OHCHR or by another United Nations body.

5. It is all the more difficult to understand how CDHRI was published in such a compilation (being the final document in volume II, under section E. "Organization of the Islamic Conference"), because OIC is not a "regional" body and CDHRI cannot correctly be defined as a "regional instrument": it is a religious instrument, which is considered by its authors as "universal".

6. We wish to highlight one example of the confusion that may occur in the future as a result of this ambiguity. At the tenth anniversary commemoration of the Convention on the Rights of the Child, in round table I: Translating law into reality, we raised the question of the relevance of the 1990 CDHRI in regard to the Convention - whether a State party should evoke it, in accordance with the principle of article 27 of the Vienna Convention on the Law of Treaties. We believe that this is apposite, particularly as CDHRI appears in the *Compilation of International Instruments* and it may be translated in subsequent editions, or reprinted.

7. In the Guide to the discussion under *Legislative review* of the Convention, item 6, *Other legal instruments*, there is direct mention of the status of such international instruments and the extent to which the Committee could or should refer to them in a systematic fashion. Any discussion should differentiate between: (a) *United Nations human rights treaties*; (b) *regional* human rights treaties; (c) *other United Nations system international* treaties ...; (d) *other international* treaties ...; (e) *other United Nations documents* ...; (f) *other non-United Nations documents* ...". (our emphasis)

8. The 1993 Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights encouraged (in Part II, para. 5) "States to consider limiting the extent of any reservations they lodge to *international human rights instruments* ..." (our emphasis)

9. We believe that examples can be multiplied and that further confusion might arise in the future (in relation to the forthcoming Year of Dialogue and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001), if the status quo concerning the inclusion of CDHRI in volume II of *Human Rights: A Compilation of International Instruments* is not rapidly resolved. Many people and United Nations bodies may be led astray, erroneously considering CDHRI to be an "international instrument" or a "regional instrument", whereas it is neither.

10. The 1990 CDHRI is a specific religious document that is totally "subject to the Islamic Sharia" (art. 24) which "is the only source of reference for the explanation or clarification of this Declaration" (art. 25). In fact, CDHRI makes it very clear that Sharia law has supremacy, and CDHRI has primacy - in the view of its authors - over other international instruments. (See E/CN.4/1992/SR.20, paras. 17-20)

11. Our position would be identical if any future edition of the *Compilation of International Instruments* would contain, in its volume II (Regional Instruments), a rabbinical "Jerusalem Declaration of Human Rights in Judaism", a Catholic "Rome Declaration of Human Rights in Catholicism", a Protestant "Geneva Declaration of Human Rights in Protestantism", etc.

12. The principal aim of the Universal Declaration of Human Rights was to create a framework for a world society that needs some universal codes based on mutual consent in order to function. It is their universal character that makes them a common base for relations between peoples across national and cultural frontiers. The United Nations - and especially the Office of the High Commissioner for Human Rights - should stand resolutely behind the international community's common goal of universality, so clearly enshrined in the International Bill of Rights, and in the other relevant international instruments.

13. The Association for World Education calls on the Commission on Human Rights, the High Commissioner for Human Rights, and all other competent United Nations authorities to examine carefully what should be done to rectify the anomalous inclusion of "Section E. Organization of the Islamic Conference. 49. The OIC's Resolution No. 49/19-P on the Cairo Declaration of Human Rights in Islam; 50. The CDHRI, adopted at Cairo on 5 August 1990" in *A Compilation of International Instruments, Volume II. Regional Instruments* (pp. 474-85). We have already addressed relevant documentation to the chairpersons of the various treaty bodies

and to members of the Sub-Commission. We feel that this matter should be discussed in May 2000 at the next meeting of the special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme.

14. The Association for World Education proposes that in all further reprintings of the English edition of volume II - and in any envisaged translations - section E should be omitted. Alternatively, the Office of the High Commissioner should provide an explanation and a legal justification for the retention of an essentially religious document in a volume purporting to contain regional and international United Nations instruments on human rights.

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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10472 (E)

A "United States of Abraham": after one decade (1990-2000)

1. Forms of regional integration are increasingly considered as the principal methodology for general security, development and the safeguard of human rights. Individual, national and regional security should be accompanied by a spirit of mutual acceptance - with economic cooperation and development as a direct by-product.

2. The European Union and the wider Council of Europe, the Association of South-East Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Commonwealth countries are a few examples of close relations involving regional integration and the promotion of human rights, even if much still remains to be achieved there - and elsewhere. The time has now come to envisage a form of Middle East regional structure.

3. On 6 March 1990, inspired by Winston Churchill's historic 1946 Zurich speech which envisaged a future "United States of Europe", a similar Middle East framework was proposed at the Commission on Human Rights, to be called: "A United States of Abraham".[1] Since then, that vision of regional integration offering security and human rights within a future Israel-Jordan-Palestine grouping, and beyond, has been propagated at the United Nations and in other circles. Therefore, the greater part of that text is reproduced here, with a few later reflections and parallel remarks by leaders of the region that highlight such positive trends in the Middle East:

> "[...] The Middle East - this noble ancient region - is the fountain of the three Abrahamitic faiths. It is the spiritual origin of more than half of humanity. If the Middle East were united in the sharing of its common inheritance, there would be no limit to the happiness, to the prosperity and the glory which its tens of millions of people would enjoy. Yet it is within the Middle East that have sprung frightful nationalist and religious quarrels, which have wrecked the peace and marred the prospects of that vast area of the world.
>
> "Yet all the while there is a remedy, which if it were generally adopted by the great majority of people in these lands, would as if by a miracle transform the whole scene, and would in a few years make all of the Middle East, or the greater part of it, free and happy. What is this sovereign remedy? It is to create the 'Family of Abraham' and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of 'United States of Abraham'. The process is simple. All that is needed is the resolve of millions of men and women to do right instead of wrong and to gain as their reward blessing instead of cursing.
>
> "And why should a future United States of the Middle East not take its rightful place with other great groupings and help to shape the onward destinies of man? In order that this should be accomplished, there must be an act of faith in which millions of men and women, speaking their diverse languages, must consciously take part. With regard to the past, there must be what that great nineteenth century British statesman, William Gladstone, called: 'A blessed act of oblivion'. All must turn their backs upon

the horrors of the past. All must look to the future. One cannot afford to drag forward across the years that are to come the hatreds and revenges which have sprung from all the various injuries of the past. If the Middle East is to be saved from infinite misery, and indeed from final doom, there must be this act of faith in the concept of a 'Family of Abraham' and this act of oblivion against all the crimes and follies of the past. Can these peoples of the Middle East rise to the height of these resolves of the soul and of the instincts of the spirit of man? If they can, the wrongs and injuries which have been inflicted will have been washed away on all sides by the miseries which have been endured. The people have only to will it and all will achieve their hearts' desire.

"The first step in the creation of the Family of Abraham must be a partnership between Israel, Jordan and the Palestinians within that geographical area designated as 'Palestine' in the original 1921 Mandate of the League of Nations. The structure of the 'United States of Abraham', if well and truly built, will be such as to make the material strength of a single State less important. Small nations will count as much as large ones and gain their honour by their contribution to the common cause. The ancient Peoples, Nations and modern States of the Middle East, freely joined together for mutual convenience in a federal - or other - system, might eventually take their individual places within this unifying concept, or condominium. I shall not try to make a detailed programme for tens of millions of peoples who want to be happy and free, prosperous and safe. If this is their wish, if this is the wish of so many peoples living in so many lands, they have only to say so, and means can certainly be found, and machinery erected, to carry that wish to full fruition. Time may be short. At present there is a breathing-space. The cannons have ceased firing. There is a lull in the fighting, but the dangers have not stopped. If there is to be a United States of Abraham, work on this concept must begin now.

"Under and within the world concept of the United Nations Organization, one must create the Family of the Middle East in a regional structure called, it may be, the United States of Abraham, and the first practical step would be to form a Council of Abraham. If at first all the Peoples, Nations and States of the Middle East are not willing or able to join the Union, one must nevertheless proceed to assemble and combine those who will and those who can. The salvation of all the peoples in the Middle East from war or servitude must be established on solid foundations. In all this urgent work, Israel, Jordan and the Palestinians must take the lead together. [...]

"Winston Churchill's vision of Europe has taken nearly half a century [spoken on 6 March 1990] to become reality. May Arab and Israeli political leaders and intellectuals - and also the representatives of all the region's minorities - act with determination, so that peace and reconciliation will come at last to the Middle East, in an upsurge of enthusiasm. If this should be the peoples' desire, surely wise leaders would wish to achieve, within the next decade, genuine peace and reconciliation (Sohl, in Arabic; Shalom, in Hebrew). Was it not written in the prophetic Biblical Book of Joel 'Your old men shall dream dreams, your young men shall see visions' (2:28). May the dialogue begin now, perhaps even here at this Commission."

4. The 6 March 1990 statement was delivered personally to Mr. Shimon Peres - then in the opposition. It was published on 24 December 1990 by the Palestinian Jerusalem weekly, Al-Fajr, which printed a second long follow-up Opinion on 31 May 1993: "A Time to Every Purpose Under Heaven: The Peace Process and New Forms of Regional Integration", signed jointly by David Littman and René Wadlow - two months before the Oslo Accords were announced and four months before the September 1993 Declaration of Principles was signed in Washington between Israel's Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat.

5. On 22 September 1992, Prime Minister Rabin told the Knesset Foreign Affairs and Defence Commission: "I place great importance on the transitory period and on the intermediate agreements with the Palestinians. But I do not exclude the possibility of a union with them which would guarantee Israel's security and its right to develop within the framework of a confederation or a federation between us, the Palestinians and Jordan" (Jerusalem Post, 23 September 1992).

6. In an interview published in Le Monde (2 September 1992), King Hassan II of Morocco, spoke about "that idea for an Israeli-Palestinian-Jordanian Confederation and its positive aspects for peace in that region of the world [and of] the great dream of a multi-religious and multiracial peace, which would be an extraordinary thing for the sons of Abraham".

7. In June 1993, just before the Oslo agreement, Shimon Peres, who had just become Foreign Minister, stated: "I suggest the establishment of an Israeli-Palestinian-Jordanian Confederation" (Haaretz, 24 June 1993). And King Hussein of Jordan declared, on the White House lawn: "For many, many years and with every prayer I have asked God Almighty to help me be a part of forging peace between the children of Abraham" (25 July 1994). Indeed, on signing the Israel-Jordan peace treaty three months later, he declared: "This is an honourable peace, a balanced peace, a peace that will last because from the first instance it was our determination to make it so". To which Prime Minister Rabin replied: "I believe this is the most beautiful act, to end not only the state of war, but to establish the structure of peace, to build the relations of peace". In a nutshell: to be a model for others.

8. A Palestinian State is now on the horizon and a new spirit of mutual acceptance will flourish in the region when individual security and dignity for all will become rooted in law. This can happen only when a general process of democratization and respect for human rights - and minorities too - becomes the natural bedrock of civil society in all the countries of the Middle East - what has been rightly called "taking the path to democracy".

9. As we have affirmed since 1993, just as European integration began with the modest step of the Coal and Steel Community, so water management in the Middle East today could set the stage for more highly developed forms of cooperation and integration. One cannot afford to talk about the crucial water issue from a narrow perspective or in a nationalist context - only scientifically.

10. Regional security will require a more balanced relationship between the Syrian Arab Republic and Lebanon, whose independence must be guaranteed after the withdrawal of all

foreign troops from its soil, linked to a broad economic and social integration between the Lebanon, Syria, Jordan, Israel, and a future Palestine. Syria is a key to regional peace, and any Israeli withdrawal from the Golan plateau is only possible if mutual confidence exists, backed by military and diplomatic guarantees. Although this vision of the future has still not yet been accepted by all the parties, a new spirit of cooperation may well lie beyond the current clouds of contention.

Notes

[1] Reprinted in Human Rights and Human Wrongs, No. 8 (World Union for Progressive Judaism, Geneva, 1990), pp. 37-39. See summary record of the 52nd meeting of the forty-sixth session of the Commission on Human Rights (1990).

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Fifty-sixth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 January 2000]

GE.00-10320 (E)

1. The International Federation of Human Rights (FIDH) and its member organizations, the Palestinian Center for Human Rights (PCHR) and the Palestinian Society for the Protection of Human Rights and the Environment (LAW), hereby wish to point out that human rights violations are being committed by Israel against the Palestinian population.

1. Conference of High Contracting Parties to the Fourth Geneva Convention of 1949

2. In light of the declining status of human rights in the Palestinian occupied territories, the United Nations General Assembly in resolution ES-10/6 of 9 February 1999, reiterated its recommendation that the High Contracting Parties to the Fourth Geneva Convention convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory. The conference was convened on 15 July 1999, but it was a complete disappointment. The process established to follow up the General Assembly's call for enforcement measures has been politicized by efforts to give political negotiations between the parties to the conflict priority over international humanitarian law. The meeting convened for a symbolic 10 minutes and was concluded with a press communiqué of 10 lines. The results were negligible and the meeting did nothing to attempt to put a stop to the inhumane occupation which continues to kill innocent people, violate basic human rights, contravene international law by building settlements, demolish homes, expel and displace residents, and confiscate private property. The conference was supposed to look at viable measures to enforce the Geneva Convention, put an end to the suffering of Palestinians and discharge the international community of its obligations under international law to enforce measures to guarantee respect for human rights and guarantee the implementation of the Fourth Geneva Convention.

2. Settlements and settler practices and their protection by Israeli soldiers in the Gaza Strip

3. There are 18 Israeli settlements in the Gaza Strip, all concentrated in strategic areas that ensure their security, are close to fresh water resources and have the most fertile soil. Currently, there are 5,000 settlers living in the Gaza Strip settlements and in some cases there are only 10 residents in one or two of the settlements. To gain control of this land and build these illegal settlements, Israel has pursued illegal means including forgery, embezzlement and land confiscation through its infamous "absentee property" law of 1950.

4. The confiscation and expropriation of Palestinian land in the Gaza Strip has continued unabated under the Barak Government and settlement activities have risen. Forty-three separate incidents regarding settlement expansion, by-pass road building and land destruction were recorded in 1999 alone, 33 more than in 1998. Settlers themselves have installed makeshift homes on various locations in the Gaza Strip in preparation for other expansion plans and land has also been confiscated to expand the military installations that surround the settlements and lead into Gaza. Construction of concrete walls around these military installations and the building of new checkpoints give the area the appearance of a war zone.

5. These settlement activities include harassment of Palestinians living near settlements and the increase of settler violence against Palestinians. Many Palestinian residents have been tortured and beaten by settlers and many have been denied access to their agricultural land and

have witnessed their property being ransacked and destroyed. These settlement activities have especially threatened the welfare and existence of an estimated 50 families living in the area of Kahn Younis. On 28 August 1999, all of these families received demolition orders for their houses.

3. Closure policies and violation of the right of free movement

6. Israeli authorities continue to impose restrictions on the movement of individuals between the Gaza Strip and the West Bank. There were 13 days of "super blockades" in 1999, down from 21 days in 1998. However, partial closures continued unabated and have been in effect for most of 1999. During full closure the transfer of goods and commodities is completely stopped and during partial closures only a small amount of cargo was allowed in or out of Gaza.

7. On 25 October 1999, the "safe passage" linking Gaza to the West Bank was opened, but still the Israeli authorities only allow a limited number of individuals to commute between Gaza and the West Bank. Overall, the closures have deeply impacted all aspects of Palestinian life. There are also approximately 1,200 university students who are routinely denied access to West Bank universities. These students are allegedly blacklisted by the Israelis and are currently being pursued by the Israeli authorities.

8. There has been no change in the number of day labourers allowed to enter Israel for employment. The 1998 figure of 25,647 labourers still stands, but it has been widely reported that Israeli military authorities have been confiscating the entry permits of Palestinians wishing to enter Israel for work. An estimated 1,200 permits were confiscated between mid-February and 13 March 1999.

Safe passage

9. On 25 October 1999 the "safe passage" route linking the West Bank with the Gaza Strip was opened. The protocol of the safe passage, signed on 5 October 1999, five years after the initial proposal contained in the Oslo II interim accords, set up the mechanisms needed to facilitate the use of the passage by Palestinians. Unfortunately, the types of procedures stipulated in the protocol could neither have made the passage "safe", nor could they provide security and safety for the individuals who wish to use it as a safety passage. As a matter of fact, they created an atmosphere of fear and apprehension owing to the fact that the Israeli authorities have complete control over the safe passage and a free hand to investigate and detain "undesirable" people using the passage. From 25 October to the end of November 1999, 18,000 people applied for permits to use the passage. The Israeli authorities approved 15,000 (83 per cent); 1,300 applications (7 per cent) were approved on condition that the applicants would be escorted, 2,900 applications (16 per cent) were rejected and an estimated 300 applications (1.6 per cent) were never answered. The rejected applicants included people who are denied entry to Israel under any circumstances. Since its opening on 25 October 1999, the number of people who have actually used the passage has reached 16,000. The number of taxis that use the passage is estimated to be 20-25 per day.

4. Palestinian detainees in Israeli prisons

10. Currently, there are more than 1,650 Palestinians and Arabs being held in Israeli jails. Israeli authorities also continue to detain Palestinians at checkpoints, either as they return home or when they leave Gaza. Under Barak's Government, the Israeli military decided to impose stricter measures against juveniles as well. According to the newly introduced rules, it would be possible to arrest Palestinian children under age 13 and send them to military courts, which often lack the minimum requirements for a fair trial. According to information disseminated by international organizations assisting juveniles, Israel is holding more than 80 Palestinian children in detention.

11. Moreover, Israel holds Palestinian detainees in its own territory, which is also in contravention of the Fourth Geneva Convention, which prohibits the detention and transfer of detainees into the territories of the occupier. In addition to inhumane detention conditions many detainees have been exposed to degrading treatment and torture. In 1999, two Palestinian detainees died in prison: the first was from Gaza and the second from Toulkarem in the West Bank. The first detainee died due to medical negligence, and the second was killed by unidentified assailants. In both cases, the prison administration should have been held responsible for their welfare and safety. In many cases, relatives of detainees are denied access to their loved ones. Moreover, Israel continues to prevent lawyers from visiting their clients and providing them with legal advice.

Israeli High Court outlaws torture

12. On 6 September 1999, the Israeli High Court issued an order outlawing torture. The case against torture was submitted in January 1998 by a number of human rights groups requesting that the High Court pronounce torture illegal. During the proceedings, Israel argued that torture was a necessary defence to protect the State and Israelis. However, these arguments have been disproved both legally and factually. Interrogators have been practising torture methods against Palestinians in Israeli detention, including but not limited to physical and psychological pressure, prolonged sleep deprivation, hooding with a dirty bag, interrogation in the hanging posture, violent shaking, intolerably loud music, the denial of food. However, the court order made an explicit call to the Knesset, the Israeli legislative body, to pass a bill allowing the practice of torture against Palestinian detainees. The Court argued that in order for interrogators to practise physical pressure, the State had to endorse a law that would allow it (see para. 37 of the Court order). The Court also argued that if torture was not indispensable, the Israeli legislative body representing the majority of people should be able to endorse a law in this regard. This should be viewed as a direct call for the legislative body to endorse the law.

13. Many of the violations mentioned above have been occurring for the last 32 years. FIDH and its affiliated organizations, PCHR and LAW, call on the Commission to condemn these Israeli human rights violations in the strongest possible terms and to take action to protect the Palestinian people from the violation of their rights.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 January 2000]

GE.00-10324 (E)

Introduction

1. The International Federation of Human Rights (FIDH) and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ), believe that issues of justice, rights and fairness have been at the heart of the conflict in Northern Ireland. The Good Friday Agreement promised the possibility of building a new society based on respect for human rights and the rule of law. Obviously the cornerstone of such a society must be a fully independent and properly functioning criminal justice system. An effective legal profession, free from official interference or harassment, is a central element of such a system.

2. The Good Friday Agreement makes regular reference to the importance of international human rights standards. It is therefore vital that the United Kingdom complies with those standards by, inter alia, implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers contained in his report on Northern Ireland, which was presented to the Commission in 1998, and the recommendations of the Committee against Torture in November 1998. Additionally, we urge action to remedy a number of outstanding human rights concerns, many of which have been the subject of previous comment by the Human Rights Committee (1991 and 1995), the Committee against Torture (1991 and 1995), the Commission on Human Rights (1993, 1994, 1996, 1998 and 1999), the Sub-Commission (1992, 1993, 1994 and 1996), the European Committee for the Prevention of Torture (1994), and have been the cause of several adverse findings against the United Kingdom in the European Court of Human Rights.

3. Regrettably the United Kingdom Government has failed to respond adequately to these concerns.

Report of the Special Rapporteur on the independence of judges and lawyers

4. FIDH and CAJ have previously expressed concern at the continuing allegations that some police officers threaten and abuse lawyers via their clients in a manner entirely inconsistent with the United Nations Basic Principles on the Role of Lawyers. One of the lawyers about whom we had expressed concern was Rosemary Nelson.

5. On 15 March 1999 Rosemary Nelson, a human rights lawyer practising in Northern Ireland, was murdered. Her murder was claimed by the Red Hand Defenders, a loyalist paramilitary group. Although this group had been involved in previous murders, it had never used the sophisticated type of device used to kill Rosemary Nelson.

6. Rosemary Nelson was a member of the Executive Committee of CAJ. She had been a tireless defender of the human rights of her clients. When the Special Rapporteur presented his report to the Commission in 1998, he drew particular attention to her case. Although unnamed by the Special Rapporteur, his report describes how Rosemary Nelson had been the "victim of numerous death threats owing to the representation of a client, who had been charged with the murder of two [Royal Ulster Constabulary] officers" (E/CN.4/1998/39/Add.4, para. 16). The Special Rapporteur went on to describe how RUC officers had allegedly assaulted Rosemary Nelson and subjected her to sectarian abuse.

7. The Special Rapporteur recommended in his report that "[W]here there is threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the Government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party" (ibid., para. 91 (b))

8. CAJ and FIDH are concerned that although the Government was warned on a number of occasions about threats to Rosemary Nelson's life, it did not provide the necessary protection for her nor did it vigorously investigate the threats against her.

9. On 10 August 1998 CAJ wrote to the Minister of Security in Northern Ireland, Mr. Adam Ingram, enclosing copies of a handwritten threat to Rosemary Nelson's life and a one-page pamphlet threatening a local nationalist leader which also referred to Rosemary Nelson, his solicitor. The pamphlet included Rosemary Nelson's business address and telephone number. In our letter to the Government we reminded them of the Special Rapporteur's recommendation in relation to the need to protect lawyers who were under threat.

10. On 24 September 1998 we received a response from the Government indicating that the documents had been passed to the Chief Constable's office for investigation. The letter indicated that the police would assess the security risk against Mrs. Nelson. The police did not contact us nor, insofar as we are aware, did they contact Mrs. Nelson. However, seven months later, a few days after Rosemary Nelson was killed, the police requested originals of the written threats we had sent to the Government in order that they could be subjected to forensic examination.

11. We are also aware that the Garvaghy Road Residents Coalition, one of Rosemary's clients, had raised the issue of Rosemary Nelson's security with the Government at a number of meetings.

12. Despite these efforts, the Government did not offer protection to Rosemary Nelson. Indeed, the only suggestion that the Government made was to invite her to apply to a government protection scheme which would have necessitated the police inspecting her house and advising her on her personal security. Many of the threats against Mrs. Nelson and other solicitors emanated, as the Special Rapporteur noted, from the police. As Rosemary Nelson herself said in testimony before the United States House of Representatives Subcommittee on International Operations and Human Rights in September 1998, the scheme would mean that "your house or your premises are assessed by the RUC for these security installations. And I wouldn't have any great faith in the RUC coming in to assess that."

13. In addition, it emerged after Rosemary Nelson's death that the complaints she had made about threats she had received from RUC had been so poorly investigated by them that officers from an English police service were asked to conduct the investigation. The Independent Commission for Police Complaints (which supervises the investigation of serious complaints) issued a statement outlining the problems it found with the investigation carried out by RUC. These included general hostility, making judgements about Rosemary Nelson's moral character, and alleging that the complaints were merely propaganda against the police. The member of ICPC who compiled this report, another female lawyer, was subsequently subjected to death threats, forced to move house and take significant security precautions.

14. FIDH and CAJ have also expressed concern at the fact that the murder of leading defence lawyer Patrick Finucane in 1989 remains unsolved. Earlier this year, in response to demands for the establishment of a public inquiry into the murder, a further police investigation into the murder was launched although two previous police investigations into the murder have failed.

15. In June this year the police charged a man called William Stobie with the murder of Mr. Finucane. When he was charged, he admitted to being a police informer at the time of the murder. He said that he had alerted the police to the murder plan but they had failed to act. He also alleged that he had told the police details about the movement of the murder weapon after the killing and they again failed to intervene.

16. It has now transpired that Mr. Stobie was arrested on serious arms charges in 1989. He was brought to trial and the charges were inexplicably withdrawn. His lawyers have alleged that this was in response to a threat from Mr. Stobie to reveal what he knew about the Finucane murder. In addition, it emerged that Mr. Stobie was arrested in relation to the Finucane murder in September 1990. During his detention he confessed to his role in the murder but was released without charge.

17. Since Mr. Stobie was charged there have been a number of further arrests but no one else has been charged in connection with the murder. It does not appear that police officers or army officers, widely believed to have been involved in the murder, have been questioned about their role.

18. In April 1998 the Special Rapporteur presented his findings on his visit to Northern Ireland to the United Nations Commission on Human Rights. He said that there should be an independent judicial inquiry into the murder of Patrick Finucane to resolve the outstanding questions of official involvement in his murder (ibid., para. 95). FIDH and CAJ support these conclusions. We do not believe that the renewed criminal investigation will be successful in uncovering the truth about security force involvement in the murder.

Conclusion

19. FIDH and CAJ believe that the cornerstone of a peaceful and democratic society must be respect for the rule of law. We believe it is essential, if lasting peace is to be established in Northern Ireland, that the Government act immediately on the recommendations of the Special Rapporteur, Mr. Cumaraswamy. Additionally, the United Kingdom Government should swiftly implement the recommendations of the Committee against Torture (1998 and 1995) and those of the Human Rights Committee (1995) and dismantle the apparatus of emergency laws currently operating in Northern Ireland. We respectfully request the Commission to urge the Government of the United Kingdom to comply immediately with its international human rights obligations in this regard.

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Fifty-sixth session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Written statement* submitted by the International Federationof Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 January 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10877 (E)

This report reproduces the recommendations adopted by the participants at the training seminar organized by the International Federation of Human Rights Leagues and its two member organizations in Lebanon, the Lebanese Association of Human Rights and the Human Rights and Humanitarian Law Foundation (Lebanon). These recommendations are principally aimed at the Lebanese Government and the 27 signatory States of the 1995 Barcelona Declaration which established a European-Mediterranean partnership.

The participants who gathered for the fourth training seminar on the European-Mediterranean human rights programme adopted the following recommendations.

Bearing in mind the importance which the Barcelona Declaration of November 1995 and association agreements attach to the concept of a State governed by the rule of law and the role of civil society, the participants were keen to define the meaning of these concepts.

A State governed by the rule of law is one that guarantees separation of powers and the independence of the judiciary, possesses a supreme court which ensures that legislation conforms to the Constitution, and safeguards civil liberties. Given these preconditions, the State may only introduce a state of emergency and invoke the concept of public order on an exceptional basis and in accordance with international instruments for the protection of human rights. Elections must be fair and transparent. Civil society means the aggregate of organizations, associations, people and media outlets whose purpose, outside the machinery of government, is to safeguard or protect civil liberties by peaceful means, ensure their effective enjoyment, and promote the emergence and validation of an independent, pluralist and collective identity based on human rights and a culture centred around the citizen. It is against such a background that one can imagine and endeavour to develop genuine dialogue between the authorities and the organizations of civil society, while bearing in mind the need to respect the independence of non-governmental organizations (NGOs) so as to avoid interference by the authorities in their work and to establish pluralist and ongoing consultative mechanisms.

2. Underscoring the principle of the universality of human rights and considering that women's rights are an integral part of human rights, the participants believe that the role of NGOs is to report human rights violations, assist the victims of such violations without discrimination, and exert influence on public opinion and national, regional and international protection bodies (including, in particular, the Commission on Human Rights, the treaty-monitoring bodies, working groups and Special Rapporteurs). They call on organizations in each country and across the region to coordinate their efforts to influence these bodies and to cooperate whenever possible while respecting the diversity and independence of the various actors in civil society.

The participants urge all NGOs to promote national debate on respect for and promotion of human rights, particularly during sessions of the various treaty-monitoring bodies.

3. Distressed by the fact that States in the region have consistently entered reservations to international instruments for the protection of human rights, and in particular to the Convention on the Elimination of All Forms of Discrimination against Women, the participants have committed themselves to pursuing efforts to encourage States to withdraw their reservations to this Convention, for example by contributing routinely to the work of the Committee on the

Elimination of All Forms of Discrimination against Women. Concerned by the extent of violence against women in the region, and particularly by the use of rape as a weapon of war and the taboo surrounding this scourge, the participants intend to strengthen their cooperation with the Special Rapporteur on violence against women, its causes and consequences. They also plan to contribute actively to the preparation of a follow-up report on the implementation of the Beijing Declaration adopted at the World Conference on Women in 1995.

4. Noting with satisfaction the declining number of cases of long-term arbitrary imprisonment of prisoners of conscience in Lebanon, the participants urge the Lebanese authorities to make every effort to halt the use of torture in police custody. There has been no official inquiry by the authorities into the fate of 17,000 disappeared persons in Lebanon. Hundreds of Lebanese and Palestinian citizens have been illegally detained in the southern occupation zone and in Israel. Hundreds more have been imprisoned in the Syrian Arab Republic. The participants demand the unconditional release of all victims of arbitrary imprisonment and the establishment of the truth, both in Lebanon and in other countries in the region, about the fate of victims of forced disappearances. Given the extent of arbitrary imprisonment and forced disappearances in the region, the participants plan to meet periodically to coordinate joint actions, and specifically to influence public opinion in member States of the European-Mediterranean partnership and its various bodies.

5. Believing that peace is one of the main objectives of the European-Mediterranean partnership, the participants touched on the situation of Palestinian refugees in the course of their work. A just and lasting peace in the region is inconceivable without taking account of their situation and the implementation of the relevant United Nations resolutions, especially those concerning the right to return. Pending the exercise of the Palestinians' inalienable right to return, the participants call for the effective implementation of the 1951 Convention relating to the Status of Refugees and the inauguration of a debate in each country with a Palestinian refugee population on the best means of protecting their dignity.

6. As a party to the principal international treaties for the protection of human rights, Lebanon has honoured its commitments by submitting periodic reports to the various treaty-monitoring bodies: the Committee on Economic, Social and Cultural Rights in June 1993, the Committee on the Rights of the Child in June 1996, the Human Rights Committee in May 1997, and the Committee on the Elimination of Racial Discrimination in March 1998. Nevertheless, Lebanon has failed to meet the deadline for submission of its latest reports to the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, and the Committee on Economic, Social and Cultural Rights. The participants have noted the significance and quality of the alternative reports submitted by Lebanese NGOs to the experts on the various Committees, and stressed the need for NGOs to start preparing now for the session of the Committee on the Elimination of All Forms of Discrimination against Women and the other Committees which are scheduled to consider Lebanese State party reports. The Lebanese Government is urged to bring national legislation into line with the international instruments to which Lebanon is a party, in conformity with the recommendations adopted by the above-mentioned Committees. It should also implement these instruments and ratify the Convention against Torture without entering any reservations that might be contrary to the aims and objectives of the Convention.

7. Recognizing as a "human rights defender" anyone who works to implement these international instruments or acts in accordance with them, the participants believe that the freedom of action and safety of human rights defenders is a prerequisite for the healthy development of a State governed by the rule of law. They call on the Lebanese Government to allow the establishment of associations by simple notification and to authorize such associations to institute civil actions alongside victims of human rights abuses. The participants regret the fact that Lebanon is one of the 26 countries (of which five are members of the European-Mediterranean partnership and 14 are members of the League of Arab States) which signed an "interpretative declaration" on the Declaration on Human Rights Defenders, adopted by the General Assembly on 9 December 1998. This "interpretative declaration", which has no legal force in international law, claims to subordinate the application of the Declaration on Human Rights Defenders to respect for the internal law of States. The participants request the Lebanese Government and other Governments in the region to withdraw these reservations and implement the provisions of the Declaration in their entirety.

8. Since the holding of the Barcelona Conference in November 1995, the European-Mediterranean partnership has made some progress despite the ups and downs of the Middle East peace process. A number of countries have now signed association agreements with the European Union (Tunisia, Morocco, Jordan) and others are currently negotiating similar treaties. The participants note that notwithstanding the inclusion of a clause explicitly referring to human rights in these agreements, the human rights situation has not improved and has even worsened in certain countries (enactment of laws drastically curtailing freedom of association in Egypt, systematic harassment of human rights defenders in Tunisia, etc.).

The participants urge the region's NGO community to take advantage of the opportunities offered by the partnership to secure effective implementation of clauses regarding human rights and the involvement of civil society. They support the recommendations of the third Barcelona follow-up forum organized by civil society in Stuttgart in April 1999.

The participants propose the inclusion of the question of women's rights in the agenda of the fourth Barcelona follow-up forum on human rights in the Mediterranean region.

Beirut, 2 October 1999

The following organizations participated:

Parents' Committee of Kidnapped and Disappeared in Lebanon

Project régional d'échange et d'information sur le genre

Lebanese Women's Council (CFL)

Ligue des droits de la femme libanaise

Lebanese NGO Forum

Fondation René Moawad

Institut des droits de l'homme du barreau de Beyrouth

Association of Women of the Mediterranean Region (AWMR)

Mouvement franco-libanais de soutien aux Libanais détenus arbitrairement (SOLIDA)

NGOs for Following Women's Issues (after Beijing)

Lebanese Council to Resist Violence against Women

Comité des droits de l'homme Ordre des avocats, Beyrouth

Association pour la défense des droits et libertés (ADDL)

Gender Linking and Information Project

Nouveaux droits de l'homme – Mission au Liban

Follow-up Committee for the Support of Lebanese Detainees in Israeli Prisons

Comité des familles des détenus libanais en Syrie

Support of Lebanese in Detention (SOLID)

Palestinian Human Rights Organization

Collectif 95 Maghreb-Egalité

Organisation égyptienne des droits de l'homme

Comité pour le respect des libertés et des droits de l'homme en Tunisie

Association marocaine des droits de l'homme (AMDH)

Organisation marocaine des droits de l'homme (OMDH)

Ligue algérienne pour la défense des droits de l'homme

Jordanian Society for Human Rights

Palestinian Society for the Protection of Human Rights and Environment (Law)

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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by The International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

GE.00-10755 (E)

1. The International Federation of Human Rights (FIDH) welcomes and looks forward to the Colombian Government's initiatives to engage in dialogue and negotiation with guerrilla movements in the interest of peace.

2. However, the Colombian Government must understand that the best way of fostering credibility in its peace proposals is to respect its international human rights obligations, complying fully with the repeated recommendations of the Commission on Human Rights, through its Chairperson, and the United Nations High Commissioner for Human Rights.

3. The peace initiatives between the Colombian State and guerrilla movements require the active participation of civil society, especially victims of human rights violations whose rights to truth, justice and compensation cannot be ignored under the pretext of possible reconciliation between armed groups. Peace cannot be built on oblivion and impunity. Otherwise democracy and society will forever be threatened by those who engage in savage acts to preserve their interests.

4. During the first 10 months of 1999, according to figures provided by the People's Advocate, 289 massacres took place in Colombia, most of which were attributable to paramilitary groups. On average, 11 persons lost their lives every day as a result of socio-political violence, including six extrajudicial executions, one enforced disappearance per day and four deaths as a direct result of clashes between the State and guerrillas.

5. Civilians continue to be the main victims of the armed conflict. Unarmed peasants, students, university professors, trade union leaders, journalists, and human rights and peace advocates are still being killed. Labour disputes and social conflicts and popular demands are still being repressed.

6. In 1999 over 300,000 persons were forcibly displaced, bringing the total number of persons who have had to flee their land, homes and work in the last few years to almost 2 million. This, in itself, constitutes one of the worst humanitarian disasters in the world. Not only has the Colombian Government not adopted a policy for preventing or addressing the problem, but it has not fulfilled the agreements reached with peasants who had asked for guarantees to return to their lands.

7. In October 1998 the Government of President Pastrana came to an agreement with 30,000 peasants who had been displaced from Sur de Bolívar and Magdalena Medio in the city of Barrancabermeja to provide the conditions for them to return to their lands, including an investment plan for the region and the dismantling of paramilitary groups. The leaders of this peasant movement have been killed one by one, among them one of the signatories of the agreements, Edgar Quiroga, who was abducted, detained, tortured and later murdered in early December 1999 by paramilitary groups who were backed by the Colombian army.

8. In spite of the fact that the Colombian Government has announced a policy for dismantling paramilitary groups, these groups still operate without hindrance throughout the

country, with the support of drug traffickers, powerful production unions, and members of the traditional political parties. The arrest warrants issued by the Office of the Attorney-General of the Nation against the leaders or promoters of these groups do not have the necessary support of the security forces and, in addition, those conducting the investigations are themselves threatened or persecuted.

9. General Nestor Ramírez, second-in-command of the army, speaking at a public forum in the United States in the first week of December 1999, said that institutions under State control - that is, the Offices of the Attorney-General and the Procurator-General - and non-governmental organizations (NGOs) have been infiltrated by guerrillas which, in turn, has exacerbated the war. It was the General himself who, in January 1999, had told human rights NGOs that soldiers did not have the "constitutional obligation to confront or pursue paramiliary groups".

10. Judicial investigations have revealed that the terrorist activities of paramiliary groups are closely linked to military action. Thus, it was established that the army was responsible for the assassination of the left-wing senator, Manuel Cepeda Vargas, which was planned and executed by a general and two military intelligence non-commissioned officers along with the paramilitary leaders, the Castaño brothers. Another general, along with commissioned and non-commissioned officers and the leaders of the same paramilitary group, are being investigated for having planned and executed the Mapiripán massacre in which dozens of people were killed.

11. Unfortunately, the Supreme Council of the Judiciary continues to refer the investigation and trial of high-ranking army officers to the military criminal justice system, as happened in the recent cases of Generals Millán and Uscátegui, who have benefited from impunity under the military jurisdiction. Although the Military Criminal Code of Justice has been reformed, the reforms have not adequately taken into account the recommendations of United Nations bodies and will only enter into force if a statute on military criminal justice is approved.

12. On the other hand, it is equally questionable that the Procurator-General of the Nation, having established that members of the Colombian army were actively or passively responsible, for crimes against humanity, should not dismiss them from military service but simply punishes them with "severe repression". The Office of the Public Prosecutor and its subdivisions thus disregard their constitutional mandate to remove from public office persons who have committed flagrant violations of the Constitution or the law.

13. Furthermore, the FIDH condemns the announced assistance of US$ 1.5 billion from the Government of the United States to the Colombian army for the so-called fight against drug trafficking. We also reject the assistance and advice offered in the creation of the "anti-drug squad" which will operate in guerrilla zones but not in zones under paramilitary control, which will only serve to undermine the possibility of establishing peace and respect for human rights.

14. Lastly, we urge the Commission to adopt a resolution on Colombia calling for the practical implementation of recommendations already formulated, in particular those on the dismantling of paramilitary groups and the definitive dismissal of State officers who actively or passively promote such groups, and for the extension of the mandate and strengthening of the Office of the United Nations High Commissioner for Human Rights in Colombia and establishing an additional mechanism such as a Special Rapporteur, given the gross and persistent violations of human rights in Colombia.

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COMMISSION ON HUMAN RIGHTS
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CIVIL AND POLITICAL RIGHTS

Written statement* submitted by the International Federation of Human Rights Leagues and the World Organization against Torture, non-governmental organizations in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Non-compliance with international obligations

1. The Peruvian State has constantly ignored the reports and recommendations of international human rights bodies, such as the Inter-American Commission on Human Rights, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Elimination of Racial Discrimination. In 1999 alone, the Inter-American Commission published seven reports[1] on 34 cases involving 65 enforced disappearances which occurred between 1989 and 1993, in addition to numerous reports from previous years whose recommendations are yet to be implemented.

2. However, the most serious act has been Peru's decision to withdraw its recognition of the jurisdiction of the Inter-American Court of Human Rights. Peru justified its decision by arguing that the Inter-American Court had exceeded its authority by prescribing the amendment of domestic legislation. This argument is unfounded, however, since all international treaties imply the adjustment of domestic legislation, in addition to which the Vienna Convention on the Law of Treaties expressly prohibits non-compliance with international treaties based on domestic legislation. Subsequent to its decision, the Peruvian State refused to respect two decisions that had been handed down by the Inter-American Court and to participate in two other cases which had been brought against it.

3. The international community has reacted almost unanimously to the decision of the Peruvian State. The European Union regrets the decision taken and several members of the Organization of American States have pointed out that it reflects a weakness in the inter-American human rights system. The Sub-Commission on the Promotion and Protection of Human Rights has urged Peru to continue to accept the jurisdiction of the Inter-American Court.

Interference in the administration of justice and judicial guarantees

4. The judiciary and the Government Procurator's Office still fall under the control of the Executive, through the Executive Committees, which have usurped their functions. The mandate of these committees has been extended to the end of 2000, through Act No. 27009.

5. This interference has also been extended to other bodies within the administration of justice system, such as the National Council of the Magistracy, an autonomous constitutional body responsible for selecting, appointing and removing judges. However, pursuant to Act No. 26933, its authority to remove judges from office was handed over to the Executive Committees.

6. Judicial posts continue to be of a provisional nature. According to the Director of the Academy of the Magistracy, there are 850 temporary judges and only 214 with tenure of office in the judiciary and the Government Procurator's Office.[2] Provisional judges are appointed by the Executive Committee of the Judiciary. Under a current programme, temporary judges may move up the ranks, to the detriment of judges with tenure of office.

7. The crimes of "aggravated terrorism" and "aggravated offences" have been created pursuant to special legislation, similar to emergency legislation implemented, in cases of terrorism, which violates judicial guarantees and grants broad investigative powers to the police. For example, the police can impose incommunicado detention or extend detention periods beyond the time frames established under the Constitution, and judges can be forced to charge detainees, even in the absence of sufficient evidence.

8. The Constitutional Court is still disjointed, rendering it impossible to challenge the constitutionality of laws which violate the Constitution.

The systematic practice of torture and other cruel, inhuman or degrading treatment

9. In spite of the adoption of the 1998 Act against torture, the systematic practice of torture has continued, even leading to the death of victims. Magistrates, especially prosecutors from the Government Procurator's Office, have refused to apply the Act, settling for lighter charges such as minor injury or abuse of authority, arguing that the injury caused to victims was not serious enough to constitute the crime of torture. In the first case of torture tried under the new law, the torturer was acquitted in spite of the evidence against him.

10. The prison system, which has been expanded is designed to destroy inmates physically and psychologically, disregarding the principle of rehabilitation as laid down in the Peruvian Constitution and Penal Code. The system covers perpetrators of terrorist crimes and inmates described as "difficult to rehabilitate". Perpetrators of such crimes are subjected to subhuman conditions and penal institutions which are veritable punishment centres. The authorities have kept the Challapalca Prison, situated inside a military barracks on a very inhospitable site more than 4,500 metres above sea level where the climatic conditions make human life difficult.

Freedom of expression

11. Pressure is still being exerted on the media. In addition to the case of Mr. Baruch Ivcher whose nationality was withdrawn so that he would lose ownership of his television station, there are also the Global Televisión and Referéndum newspaper cases. Mr. Delgado Parker lost the management of Global Televisión in summary judicial proceedings because the station was broadcasting a political programme in open opposition to the President's re-election. The newspaper Referéndum, also in open opposition to the Government, was forced out of operation as the company that printed it was threatened with investigation by the National Tax Administration Authority (SUNAT) if it did not comply.

12. A campaign of defamation has been unleashed against human rights defenders and bodies, independent journalists and political opposition leaders through the media and Internet. According to media workers' reports, this campaign is spearheaded by the National Intelligence Service.

13. The Web site of the so-called Pro-Truth Association (APRODEV), which attacks journalists who are critical of the Government, is part of this campaign. Criminal proceedings have been brought against Héctor Faisal, APRODEV's legal representative, but they have been manipulated in his favour. The judges who were hearing the case, Antonia Saquicuray and Greta Minaya, were removed from office after ruling in favour of the plaintiffs. The judges who were appointed to replace them subsequently overturned those decisions.

14. Journalists who report on the Government's anti-opposition activities are being persecuted. One such example is that of the Free Press Association members who presented proof, at a press conference, of surveillance of prospective presidential candidates by members of the Military Intelligence Service, and who were later accused by the Supreme Council of Military Justice of crimes against public faith and the judicial function.

Absence of guarantees in the electoral process (art. 25)

15. A number of legislative changes have been introduced to provide a legal framework for President Fujumori to have a third unconstitutional term in office, leaving the electoral process open to possible fraud. Consequently, the law on "authentic interpretation", which would enable the current President of the Republic to run for a third term, was passed in 1996, triggering preliminary political proceedings for judicial misconduct and the subsequent dismissal of the Constitutional Court judges who ruled that the law was invalid, and the resignation of the Court's President.

16. There are well-founded fears that the elections will not be conducted in a transparent manner since the monitoring of the electoral process is in the hands of the executive branch.

17. In August 1999 Act No. 27163 was passed, prohibiting senior State officials involved in criminal cases concerning crimes against the State, or those on fiscal charges or with arrest warrants from presenting their candidacy for the presidency or vice-presidency of the Republic. This is designed to exclude the former President of the Republic Alan Garcia and other candidates from the presidency since they are involved in judicial proceedings for alleged maladministration during their term of office, which, in fact, violates the principle of presumption of innocence.

18. Additionally, several presidential candidates have publicly stated that they are under surveillance by the National Intelligence Service and have referred to interference at public events. As a result, the Office of the People's Advocate has assumed the responsibility of supervising and observing the electoral process.

19. Finally, the lack of consolidated official data on the electoral register has prompted questions about the minimum conditions for a transparent electoral process open to public scrutiny.

20. These situations are obstructions to the electoral process and could lead to fraud. This is why we believe that the elections should have international observers, not only during the actual voting but during the entire electoral process.

Conclusion

21. The International Federation of Human Rights Leagues calls on the Commission on Human Rights to urge the Peruvian Government to comply with the decisions of international human rights bodies, and to follow closely the situation regarding human rights and democracy in Peru, with a view to halting human rights violations against the Peruvian people and preventing electoral fraud that would make the current regime blatantly illegitimate and destabilize the Andean region at the start of the new millennium.

Notes

[1] Report Nos. 51/99, 52/99, 53/99, 54/99, 55/99, 56/99 and 57/99.

[2] La República, 18 March 1999.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Written statement* submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

The International Federation of Human Rights Leagues (FIDH) and its affiliate, the Vietnamese Committee on Human Rights, are very concerned about the complete absence of freedom of expression in Viet Nam. Censorship is particularly serious in that it is the result of a policy formulated at the highest level of the State and the Vietnamese Communist Party (PCV), despite Viet Nam's accession to the International Covenant on Civil and Political Rights.

The constitutional protection of freedom of expression (art. 69) is impeded by article 4 of the 1992 Constitution, which grants the PCV exclusive leadership of the State and society, and which has primacy over article 69. Indeed, a reading of the Vietnamese Criminal Code shows that the determining factor in charges is first and foremost the danger which the actions in question constitute for the socialist regime. It will therefore be on the basis of the authorities' fears for their privileges and stability that freedom of expression will be assessed in Viet Nam.

In this respect, it has become common knowledge that the vague, all-embracing concept of "national security" is used by Viet Nam to punish the lawful exercise of the right to freedom of expression, as had been predicted by the Working Group on Arbitrary Detention in October 1994, and as was noted by Mr. Abdelfattah Amor, Special Rapporteur on the question of religious intolerance, during his visit in October 1998.

In flagrant breach of article 19 of the Covenant, chapter I of the Vietnamese Criminal Code defines offences against national security. An examination of that chapter shows that the protection of "national security" conceals a whole legal arsenal making the regime untouchable, to the exclusion of any other component of Vietnamese society. Thus, article 74 relating to espionage prohibits "the supplying of information and documents unrelated to State secrets to a foreign Power for use against the interests of the Socialist Republic of Viet Nam"; article 79, relating to "sabotage of the infrastructure of socialism", an extremely vague and obscure charge, permits completely arbitrary action in apprehending "bad elements" opposed to the regime; article 82, on "propaganda against the socialist system", patently prohibits any dissemination of information or opinions deemed harmful to the regime; and articles 92 and 93 (in the name of "national security"), 222 and 223 make it an offence to publish, intentionally or otherwise, State secrets, classified documents or "official secrets".

The eminent dissident Thich Quang Do has once again fallen victim to this legislation after writing to European Union ambassadors in June 1999 in order to ask them to support the cause of human rights and 31 prisoners of conscience at their forthcoming meeting with the Vietnamese authorities the following 28 July. He was arrested and interrogated by the Security Agency in Ho Chi Minh City on 6 August 1999, and accused of violating "national security" through that letter. The following 17 September, while interrogating the dissidents Thich Tue Sy and Thich Khong Tanh, and proud of having "shown the door" to the Special Rapporteur on religious intolerance, the Ho Chi Minh City Security Agency informed them that a warrant for the arrest of Thich Quang Do and themselves had been signed and that they could therefore be imprisoned "at any time".

The "national security" offences carry a wide range of penalties, including long-term imprisonment, life imprisonment and capital punishment. Decree No. 31/CP relating to "administrative detention" of 14 April 1997 added to them the offence of suspected violation of

"national security", establishing a penalty of up to two years' detention without trial for offences against "national security" that were "not serious enough to be punished as a criminal offence" (art. 2), in other words, all acts and deeds by the public.

This mechanism joins three other instruments of repression of freedom of expression: the residence permit (ho khau), an essential document establishing civil rights; the sector police responsible for political control of a particular district (approximately 300 people), who are able to enter the home of any person without authorization of any kind, and issue and withdraw residence permits arbitrarily; compulsory references to political activity, including that of the family, religious affiliation, opinions, etc. in curricula vitae, which will influence candidates' success or otherwise (with a special form for monks comprising the political views before and after 1975 of the person concerned, his family and his acquaintances).

At the same time, the State and the PCV are stepping up control of the press and communication media such as the Internet. In accordance with article 4 of the 1992 Constitution, and despite the existence of over 500 newspapers and magazines, the press remains entirely under State control. In financial terms, nine tenths of publications are dependent on subsidies from the State, and in June 1999 Nguyen Khoa Diem, Minister of Culture and Information, announced the closure of several excessively commercial publications which had neglected "their role of informing the public". He also denounced the tendency of certain newspapers to show "foreign, extravagant and harmful lifestyles", rather than reporting the official policy of the State.

Also in 1999, two eminent dissidents officially requested approval to issue independent publications, but to no avail. General Tran Do, a recent advocate of democratic reforms of the PCV, requested authorization to found a free newspaper but this was refused. A few months later, on 22 September 1999, Thich Quang Do asked the Government to authorize the Unified Buddhist Church of Viet Nam (EBUV, a banned independent Church) to publish a Buddhist monthly entitled "Forum for dialogue and exchange", and to review all legislation incompatible with the Universal Declaration of Human Rights and the Covenant. His request went unanswered.

The Press Act, adopted on 19 May 1999, establishes the responsibility of Vietnamese journalists for their articles, and the compensation and apologies they will have to give to the persons they criticize, even if the facts reported are confirmed (these persons, in accordance with the same Act, do not have to prove the inaccuracy of the information). By this means, the Act forces journalists to exercise self-censorship and renders their investigative work useless. It constitutes an unacceptable violation of freedom of expression and the press, and seems to be intended to protect the reputation of Party leaders. This complaint was voiced by Mrs. Nguyen The Thanh, Vice-President of the Ho Chi Minh City Women's Union: "Many things which should be published are covered up for the sake of the 'protection of the secrets and reputations of the leaders' ... [The leaders] think only of their own interests, and try to extend their privileges and benefit from corruption".

In addition to this "private censorship", State censorship continues with, in recent years, numerous campaigns to mobilize journalists, artists, intellectuals, etc. to promote the Marxist-Leninist revolution. Vo Van Kiet, the former Prime Minister, explained the expulsion

of General Tran Do from the Party, stating that "Party members were not authorized to express views that are not consistent with the Party's policies, which permits all censorship of the Vietnamese press in the hands of the Communist Party.

In practice, however, the FIDH and the Vietnamese Committee on Human Rights have, for some years now, noted that censorship affects all strata of the population, as testified by the ferocious and continuing repression of all forms of peaceful dissent. Nguyen Thanh Giang, a geophysicist, was arrested on 4 March 1999 and detained for two months for possession of "antisocialist documents", and for writing and publishing articles on corruption. In a letter of September 1999, he complained that his children had lost their jobs because of his activities. Thich Tue Sy, Secretary-General of the EBUV, had his computer hard disk confiscated. The same happened to the fax machine belonging to Thich Khong Tanh, who was also sentenced to pay a fine of 2 million dongs in October 1999 (in addition, his telephone line was cut). And following his visit to Thich Huyen Quang, the Patriarch of the EBUV, Thich Khong Tanh was apprehended by the Security Agency on 9 November 1999, interrogated for two days, and forced to undress and surrender all documents that had been entrusted to him by the Patriarch. At the same time, all followers of Thich Khong Tanh were urged by the Security Agency to leave him or to turn informer, and on 3 December 1999 the authorities organized a meeting for the public denunciation of Thich Khong Tanh.

The FIDH and the Vietnamese Committee on Human Rights very strongly denounce the policy, decided at the highest level of the State and the PCV, to suppress freedom of opinion, expression and the press. Recalling that the Socialist Republic of Viet Nam had undertaken to protect and promote the right to freedom of expression, a right from which no derogation may be made, by acceding to the Covenant in 1982, these organizations call on the Commission to lend its full support to the request made by the Special Rapporteur on freedom of expression when he visited Viet Nam three years ago.

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INDIGENOUS ISSUES

Written statement * submitted by the International Federation of Human Rights Leagues (FIDH), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10930 (E)

In 1998 the International Federation of Human Rights League (FIDH) published the report of an observer mission to Chile entitled: "Les Péhuenche-Mapuche et le projet hydroélectrique de Ralco dans l'Alto Bio Bio: un peuple menacé."* (The Pehuenche-Mapuche and the Ralco hydroelectric project in the Upper Bio Bio: a people under threat.) Since then, FIDH representatives have visited a number of indigenous communities in Chile and have followed the progress of the situation very closely in the past year.

Despite the desire expressed by the Government of Chile to give special attention to the indigenous peoples who comprise 10 per cent of Chile's population through the adoption of an Indigenous Act designed to promote their development by guaranteeing them access to land and water, their situation as regards economic, social and cultural rights and the recognition of their collective rights is slow to improve.

In the north of Chile, the Aymaras and the Atacameños are experiencing serious problems of access to water because of the activities of large mining companies in the Andes. According to the testimony we have received, the Atacameños consider that their human rights have been violated as a result of reprehensible and unwarranted practices of appropriation of part of their genetic heritage through blood-sampling or by taking samples from the bones of ancient mummies on display in various museums in their regions, possibly for commercial purposes.

On Easter Island, the Rapa Nui have to fight to keep control of their lives and territory in the face of the plans for expansion of the large tourist agencies.

In the south, the Mapuches are in the midst of a serious crisis due to the impact of public and private mega-projects and the cumulative effects of the usurpation of their land over many generations, particularly since the legislation privatizing collective ownership of their land passed by the dictator, Augusto Pinochet, who was recently placed under arrest in London on grounds of crimes against humanity and is likely to be brought to justice in Spain. An in-depth investigation by the Chilean Government on the consequences of Pinochet's acts in the case of the usurpation of the Mapuche lands could lead to reparation of the harm done to this people during the dictatorship. (It may be recalled that a number of Mapuche leaders were assassinated and disappeared during the dictatorship and that their organizations have been subjected to ferocious repression.)

Despite the Indigenous Act of 1993 which recognized the right of participation of the indigenous peoples and their right to the land, the rights of the Mapuche people have been seriously undermined as a result of policies of investment in large-scale forestry production. In the case of the Mapuche territories the extent of growth in these sectors has been such that the Mapuche organizations see it as a second occupation of Araucania, the reference being to the military occupation of their territory at the end of the last century.

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* Mr. Claude Katz (France) and Mr. Thomas R. Burger (Canada), Report on mission to Chile. International Federation of Human Rights Leagues, special edition 258/3, Paris, 1998, published in French and Spanish.

The right of indigenous peoples to take part in decision-making in projects concerning their territory and seriously affecting their communities, as stipulated in Chile's Indigenous Act or more explicitly still in international law (ILO Convention) has been constantly infringed by the Chilean State in recent years.

The example of the Ralco project speaks volumes. Despite the initial expression of the wishes of the Pehuenche-Mapuche, despite the recommendations of FIDH and other national and international organizations, despite the views of experts and the opinions of two Directors of the National Indigenous Development Corporation (a Chilean state body responsible for the protection and development of the indigenous peoples) and the majority of its Board at the time, the Government continues to partner the private developers of the project (ENDESA-Chile which relies on Spanish capital from CONAMA) in endeavouring to break down the resistance of the families who refuse, as Chile's Indigenous Act gives them the right to do, to abandon their land.

The establishment in the indigenous territories of an economy based on the large-scale development of natural resources has rendered ineffectual the protection of the land as laid down in the Indigenous Act. The sheer size of the forestry developments on indigenous territory has virtually turned the communities into cramped little islands, with no possibility of expanding their farmland so as to provide for their own basic needs.

The big lumber companies have been able to buy up more than 1 million hectares in the heart of Mapuche territory over the last few decades, to the detriment of community land. With their plantations of introduced species of pine and eucalyptus, these huge forest developments now surround the Mapuche communities and threaten their very existence.

In their visits to the communities, the FIDH observers have seen the extreme poverty that exists there, the precarious nature of agriculture (soil-erosion, impossibility of enriching farmland for want of money, absence of machinery), a sanitary situation reminiscent of last century, a lack of roads to provide an outlet for the small surplus of produce and permit movement, many communities without electricity or means of communication, and under-resourced-schools with syllabuses which are just beginning to incorporate and transmit the Mapuche culture and language (bilingual intercultural education); on the other hand, the FIDH representatives have been able to witness the strength and determination of the Mapuche people to preserve (and sometimes rediscover) their culture and language and to have the Chilean State recognize their collective rights. The assertion of their cultural identity in terms of religion, language and politics is a phenomenon which is growing and expanding and bears witness to the vitality of the Mapuche people.

FIDH considers that, in view of the situation of the Mapuches in terms both of economic, social and cultural rights and of collective rights (self-government, territory, acceptance in Chile as a people), there are good grounds for increasingly frequent acts of civil disobedience and for the fact that the Mapuche organizations take part in national marches and land occupation and make their voices heard not only in Chile but in international forums too.

It may be noted that the Government is often incapable of responses other than increased repressive violence and largely unjustified arrests. In all the demonstrations which

took place in 1999, an alarming hardening of the relations between the Chilean Government and the Mapuche organizations was visible. For example, it was observed that the Office of the Intendant of Chile's VIII Region successfully requested the courts to agree that the State Internal Security Act should be applied to persons arrested in the course of clashes between the lumber companies and the Mapuche communities. FIDH considers that Chile is on the wrong track when it makes use of emergency measures of this type. It may be recalled that these laws require judges to pass down severe minimum sentences on the accused. We would like to mention that, following a clash in the region of Traigen, a Mapuche delegate who had come to Geneva to take part in United Nations work and visit the International Federation of Human Rights Leagues in Paris was arrested on his return to Santiago when he alighted from the plane.

FIDH notes that the Chilean Constitution, unlike those of other American countries, does not recognize its indigenous peoples or their territory, far less their right to self-government, even internally. In its report on Ralco it had recommended that the Chilean Government should ratify International Labour Organization Convention No.169, which still today is the only valid legal international document for indigenous peoples. It finds it hard to understand the Chilean Government's unwillingness to commit itself firmly to a trend which is increasingly accepted internationally. In several countries, including Denmark, Norway and Canada, the collective rights of indigenous peoples are increasingly being recognized as a result of legislative measures and the signing of treaties.

Both the United Nations and the Organization of American States have recently gone more deeply into the matter as can be seen from their draft Declarations on the rights of indigenous peoples (even where the Declarations do not always satisfy the legitimate aspirations of indigenous peoples). These Declarations admit autonomy and self-government in domestic and local matters as a form of the right of peoples to self-determination. They also recognize the right of indigenous peoples to their currently owned and ancestral lands. Such rights include the right to control the use of the territory and the right to a share in the profits from natural resources, including the flora and fauna and soil and mineral resources.

FIDH calls on the Chilean Government to take account in its policies and acts of the legitimate nature of the present claims of Chile's indigenous peoples, whether in relation to their situation of extreme poverty (cf. UNDP report, 1998) and exclusion or the discrimination and racism still much in evidence in all spheres, or in their expression of the need for the recognition of their collective rights as a people and the requirement of territorial self-government within Chilean society. These are legitimate aspirations from the viewpoint of the development of international law for indigenous peoples.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Joint written statement submitted by the American Jewish Committee and the World Jewish Congress, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 December 1999]

GE.00-10316 (E)

Introduction

1. The Commission on Human Rights has promoted human rights longer than any other United Nations forum. In 1967, the Commission on Human Rights shifted its focus to examine allegations of human rights violations; it has created a number of procedures to monitor human rights compliance worldwide. Among the most important of these mechanisms is the appointment of special rapporteurs to investigate potential human rights abuses. These special rapporteurs report their findings publicly and offer recommendations, helping to extend the shield of human rights where needed.

2. However, the Commission's approach to Israel's human rights record is punitive and anachronistic. For its part, it overlooks the changing realties in Israel and the occupied territories resulting from the bilateral peace process. Since 1993, living conditions of Palestinians in the territories have improved, and Israel has transferred much power to the Palestinian Authority:

- GDP, employment and income in Palestinian Authority self-rule areas have increased; [1]
- The Palestinian Authority oversees education, health, social welfare, taxation, the judiciary, prisons and the police, among other responsibilities;
- Pursuant to peace agreements, Israel has opened a "safe passage" linking Palestinian Authority self-rule areas; [2]
- The "centre of life" policy governing residency in Jerusalem has been liberalized. [3]

Yet real improvements are not reflected in the Commission's antiquated and prejudicial treatment of Israel.

3. There are two significant problems in the way the Commission deals with Israel:

(a) The mandate of the Special Rapporteur on the Palestinian territories is biased and outdated;

(b) The Commission's agenda unfairly singles out one member State for special consideration.

These two issues result in the violation of the Charter of the United Nations.

The mandate of the Special Rapporteur on the Palestinian territories is biased and outdated

4. In 1993, the Commission on Human Rights adopted resolution 1993/2 A, entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine". It called for the appointment of a special rapporteur "to investigate Israel's violations of the principles and bases of international law, international humanitarian law ... in the Palestinian

territories occupied by Israel since 1967". This investigation will continue "until the end of the Israeli occupation of those territories". [4] Two special rapporteurs have undertaken this mandate, and both have resigned their commission. [5]

Violation of the Charter of the United Nations

5. The unique mandate of the Special Rapporteur for the territories violates Article 2 of the Charter, which states: "The Organization is based on the principle of the sovereign equality of all its Members." [6]

6. The mandate is sui generis; it alone, among country-specific mandates, is open-ended. All other special rapporteur mandates are renewed periodically, thereby reflecting changes in circumstances on the ground. That the mandate of the Special Rapporteur for the territories is open-ended highlights the prejudicial manner under which this Special Rapporteur functions. This demeans the office of the Special Rapporteur, and violates principles of member State equality.

7. The mandate of the Special Rapporteur presupposes Israel's abuses. To conclude a country has violated human rights before uncovering evidence is to deny that country due process and procedural fairness. Thus, the biased mandate results in the unequal treatment of Israel before the Commission, and the United Nations.

Limited human rights protection in the territories

8. The Special Rapporteur is not mandated to investigate all human rights abuses in the territories, weakening the circle of protection the United Nations is able to extend to Palestinians in the territories, the very people the mandate purportedly seeks to protect.

9. Yet, according to the Special Rapporteur, one of the four principal reasons for Palestinian suffering is "violations perpetrated by the Palestinian Authority". [7] Given the current mandate, the Special Rapporteur's inability to raise the alarm on all violations in the territories leaves many occupants unprotected. This distressing reality has been pointed out to the Commission: "It has been the consistent view of the Special Rapporteur that the mandate has to be reviewed. The only reason for amending the mandate is the respect for human rights; the Special Rapporteur has to have a sufficiently broad mandate to contribute to achieving that goal." [8]

10. That responsibility for human rights abuses lies with the Palestinian Authority is indisputable. Reports by Amnesty International, Human Rights Watch, and the United States Department of State cite consistent instances of arbitrary detention, unfair judicial process, torture, and press censorship. [9] According to Amnesty International, more than 500 political detainees remain under Palestinian Authority detention without charge or trial. [10] Yet the Commission's Special Rapporteur is not mandated to investigate these abuses, compromising the Commission's ability to protect human rights.

The Commission's agenda unfairly singles out one member State for special consideration

11. "The question of the violation of human rights in the occupied Arab territories, including Palestine" continues to be considered under a separate Commission agenda item from all the human rights tragedies in the rest of the world - another example of Israel's sui generis status before the Commission.

12. The very construction of the agenda singles out one member State for special condemnation - thus abridging that Member's equality and due process rights under the Charter. As the Special Rapporteur himself has stated: "In the interest of achieving substantive improvement of the human rights situation, it is not conceivable to separate the item from other relevant subsequent items on the agenda. This is, undoubtedly, at the same time a question of principle." [11]

13. The Commission has rightfully attempted to restructure its agenda, yet the problem surrounding Israel's treatment persists. The departure from procedural fairness in examining Israel under a separate agenda item undermines the Commission's legitimacy in examining all human rights violations.

Conclusion

14. The protection of human rights will always entail a political dimension. Human rights are, after all, a question of State behaviour. But if the Commission on Human Rights is to enjoy credibility and legitimacy, it must ensure its procedures are not abused for political ends.

15. Thus: when the Commission agenda singles out only one State for special consideration; when only one Special Rapporteur has a mandate that is not regularly renewed; when that Special Rapporteur is told to ignore a recognized source of human rights violations; when an entire series of Commission resolutions fails to account for substantive and verifiable advances in a peace process; when all these situations prevail – as they now do – then it is fair to ask whether or not the Commission has crossed the threshold of acceptable politicization. Only the Commission can put its own house in order.

Notes

[1] Assistance to the Palestinian people: Report of the Secretary-General (A/54/134), paras. 11-20.

[2] Protocol Concerning Safe Passage between the West Bank and the Gaza Strip, signed by the Government of the State of Israel and the Palestine Liberation Organization, 5 October 1999.

[3] Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip, and Palestinian Authority Territories, December 1999.

[4] Commission on Human Rights, resolution 1993/2 A, para. 4.

[5] Mr. René Felber (Switzerland), 1993-1995, Mr. Hannu Halinen (Finland), 1995-1999.

[6] Charter of the United Nations, Article 2, para. 1.

[7] Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A (E/CN.4/1998/17), para. 65.

[8] Ibid., para. 73.

[9] Amnesty International, Annual Report 1999: Palestinian Authority, December 1999, Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip, and Palestinian Authority Territories, December 1999; United States Department of State, The Occupied Territories Country Report on Human Rights Practices for 1998, February 1999.

[10] Amnesty International, ibid.

[11] Report on the situation of human rights in the Palestinian territories occupied since 1967, op. cit., para. 79.

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Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Baha'i International Community,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 January 2000]

GE.00-10312 (E)

The right to education

1. The right to education is, in the view of the Baha'i International Community, one of the most important rights set forth in the Universal Declaration of Human Rights. So important is the right to education that it is elaborated in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Indeed, the very mission of the founders of the great religions throughout history has been to educate humankind. Education is critical to the development of each individual's potential and to his or her enjoyment of the full range of human rights. At the same time, education must serve society as a whole by instilling in individuals an unwavering respect for the rights of others and a desire to uphold and defend those rights.

2. The Baha'i International Community is, therefore, pleased that in 1998 the Commission on Human Rights accepted the recommendation of the Committee on Economic, Social and Cultural Rights to appoint a special rapporteur whose mandate "will focus on the right to education".[1] We are also pleased that the Special Rapporteur's mandate addresses implementation "of the principle of compulsory primary education free of charge for all"[2] and that it takes into account "the situation and needs of the girl child".[3]

3. While we agree that access to education is a matter that must be given serious attention by Governments and non-governmental organizations alike, we feel that the content of education is of primary importance. The Universal Declaration of Human Rights states that the goal of education is not only "the full development of the human personality and the sense of its dignity" but also the promotion of "understanding, tolerance and friendship among all nations, racial, ethnic or religious groups ..."[4] To accomplish these broad and lofty goals, education must address the whole person, that is, it should seek to develop the full range of human capacities – intellectual, social, physical and spiritual.

4. In the minds of many, the aim of education is limited to empowering the person to achieve material well-being and prosperity, with little regard for his or her responsibility towards others and humanity as a whole. Such a materialistic approach to education will continue to exacerbate the disparity between the wealthy few and the impoverished many – perpetuating the injustices of social stratification and contributing to the increasing instability in the world. If, however, material education goes hand in hand with spiritual education and moral development, it will be the means for ensuring the well-being and prosperity of humanity as a whole. Instead of emphasizing competition, education would do well, at this point in history, to foster the attitudes and skills necessary for cooperation; for the very survival of humankind now depends on our ability to cooperate and on our collective commitment to justice and human rights for all. The ability to cooperate with others will also ensure that increasing numbers of people will benefit from the right to education.

5. The recent conflicts in Europe demonstrate the failure of material education alone to foster respect for human rights. The Baha'i faith, as a matter of principle, accords priority to spiritual and moral education over the other aspects of education. "Good behaviour and high moral character must come first", say the Baha'i Writings, "for unless the character be trained, acquiring knowledge will only prove injurious. Knowledge is praiseworthy when it is coupled with ethical conduct and a virtuous character, otherwise it is a deadly poison, a frightful

danger".[5] The function of moral and spiritual education is to guide the use of human capacities for the good of all. We submit, therefore, that the goal of education should be not only the acquisition of knowledge, but also the acquisition of spiritual qualities such as compassion, trustworthiness, service, justice, and respect for all.

6. At the heart of the report of the United Nations Educational, Scientific and Cultural Organization, Learning: The Treasure Within,[6] is the notion put forth in the Convention on the Rights of the Child that education should enable the individual to develop fully his or her potentialities.[7] "Regard man as a mine rich in gems of inestimable value". Bahá'u'lláh urges, "Education can, alone, cause it to reveal its treasures, and enable mankind to benefit therefrom".[8] These treasures must be consciously developed, drawn out and cultivated because although the capacity for good is innate, human beings can fall prey to equally innate corrupt inclinations. "Man is even as steel", states Bahá'u'lláh, "the essence of which is hidden: through admonition and explanation, good counsel and education, that essence will be brought to light. If, however, he be allowed to remain in his original condition, the corrosion of lusts and appetites will effectively destroy him".[9]

7. Because every child stands in need of education, particularly in moral values, it is essential that education be provided for girl children, who will be the mothers and first educators of succeeding generations. Educating mothers is the most efficient way of ensuring that the benefits of education are diffused into society as a whole. Providing women and girls equal access to education will also make possible their full participation in society, which Baha'is believe will be the catalyst for the creation of a just society and the establishment of lasting peace in the world. We, therefore, endorse the resolution's recommendation that the Special Rapporteur "promote the elimination of all forms of discrimination in education".[10]

8. In considering the content of education, it is important to remember that the prejudices separating the peoples of the world and, at times, erupting into conflicts and wars are not just the result of ignorance but are sometimes the product of a biased education. The development of and adherence to a universal set of educational principles, based, perhaps, on the Universal Declaration of Human Rights, could provide a unifying framework within which to cultivate an understanding of the diversity of human experience. The strength of such a framework will derive from its basis in the principle of the oneness of humanity. Acceptance of that one principle will make possible the cultivation of unity among the diverse elements of the human family, recognizing common human aspirations in the varied cultures, habits, and temperaments that exist in every country and throughout the world. The oneness of humanity and the universality of human rights should be taught in every classroom in the world, along with skills in consultation and conflict resolution.

9. Education should be universal, compulsory and free of charge. We acknowledge that such a goal can be accomplished only when the responsibility is shared. "Everyone, whether man or woman, should", according to Baha'i scripture, "hand over ... a portion of what he or she earneth through trade, agriculture or other occupation, for the training and education of children".[11] We commend the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, for having included "Financial obstacles impeding access to primary school" as part of her preliminary report.[12]

10. Even where Governments provide educational services, some groups still encounter obstacles. The experience of the United Nations agencies and the Member States in the fields of literacy and public health has shown that certain segments of the population in various countries remain unable to benefit from such public services owing to political, cultural, ethnic, language or geographical situations. We, therefore, submit that special provision be stipulated for the protection of the right of education for such deprived groups. We look forward to the Special Rapporteur's planned collection and analysis of "the existing quantitative and qualitative information on the pattern of the lack of access to education in order to map out obstacles to the realization of the right to education".[13]

11. Finally, while we agree that priority should be given to universal compulsory education in childhood, we also believe that everyone benefits when education becomes a life-long process. UNESCO states that education should instil a thirst and a desire for knowledge,[14] and we would add that it should also foster a desire for excellence. Such aspirations acquired in childhood, coupled with life-long possibilities for furthering education, are the bases for an ever-advancing civilization.

12. The Baha'i International Community will continue its efforts to support education that develops individual capacity and instils respect for the human rights and fundamental freedoms of every person. In this regard, it is pleased to pledge its full support and cooperation to the Commission's Special Rapporteur for the preservation and universal implementation of the right to education.

Notes

[1] Commission on Human Rights resolution 1998/33, para. 6 (a).

[2] Ibid. para. 6 (a) (ii).

[3] Ibid. para. 6 (a) (iii).

[4] Article 13 of the International Covenant on Economic, Social and Cultural Rights; article 26 of the Universal Declaration of Human Rights.

[5] Baha'i Education, a compilation of extracts from the Baha'i Writings, London, Baha'i Publishing Trust, 1987, p. 29, para. 74

[6] See the report to UNESCO of the International Commission on Education for the Twenty-first century: "Learning: The Treasure Within".

[7] See the Convention on the Rights of the Child, article 29 (a).

[8] Gleanings of the Writings of Bahá-u-lláh, CXXII, pp. 259-60.

[9] Baha'i Education, p. 3, para. 10.

[10] Commission on Human Rights resolution 1998/33, para. 6 (a) (iii).

[11] Tablets of Bahá-u-lláh, p. 90.

[12] E/CN.4/1999/49, para. 32-41.

[13] Ibid., para. 59.

[14] Report to UNESCO of the International Commission on Education for the Twenty-first century. One of the four pillars of education is "learning to know".

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

GE.00-10328 (E)

The violation of economic and social rights of the legally identified enemies of Bangladesh

1. The United Nations Declaration on the Right to Development defines development as a comprehensive economic, social and cultural process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. The Declaration identifies the right to development as an inalienable human right by virtue of which every individual is entitled to participate in, contribute to, and enjoy economic, social and cultural and political development in which all human rights and fundamental freedoms can be fully realized.

2. Yet, when the State itself adopts discriminatory laws to deny equal opportunities to the minorities, the right to development loses its meaning. The South Asia Human Rights Documentation Centre (SAHRDC) has been concerned about such denial of equal opportunities. The countries of the South, including Bangladesh, often raise the issue of the right to development. Yet, a cursory look reveals how the Governments deny equal opportunities. SAHRDC in particular would like to highlight the discrimination against the Hindu minority in Bangladesh through the Enemy (Vested) Property Act.

3. In 1965, after the Indo-Pakistan War, the then Government of Pakistan introduced the Enemy Property (Custody and Registration) Order II of 1965. It identified the minority Hindus as enemies and it was an instrument to take away lands from the Hindu minority labelled as supporters of India.

4. After independence from Pakistan, the President of Bangladesh in his Order No. 29 of 1972 changed the nomenclature to Vested Property Act. Under this order, "properties" means "properties of any kind, movable or immovable, and includes any right or interest in such properties, debt or actionable claim, any security or negotiable instrument, and any right under a contract and any industrial or commercial undertaking" and "security" includes share, scrip, stock, bond, debenture or debenture stock or other marketable security of a like nature in or of any body corporate and Government securities. Clause 2 of the Order further states, "Nothing contained in this Order shall be called in question in any court".

5. The Order of the President and the Enemy (Vested) Property Act have hence not been subjected to any judicial review. However, the minority Hindus continue to be deprived of their economic rights. The Law Ministry of Bangladesh in a memo dated 4 November 1993 to all deputy commissioners directed that the census list of vested properties be verified. Under this directive the Government formed the Thana (Police Station) Vested Property Verification Committee, empowered to verify that the listed properties which have not yet been properly recorded and/or leased out are in fact vested properties. Rather than verifying the existing land, the government authorities grabbed more land. The property belonging to 61 Hindu minority families in Ashefpur and Chawkjara villages were identified as "enemy properties" under the directive.[1]

6. The estimated total number of Hindu households affected by the Act is over 1 million, and the estimated total land of which they were dispossessed is over 1 million acres. About 30 per cent of the Hindu households, or 10 out of every 34 Hindu households, are the victims of the Act. These estimates, although based on various plausible assumptions, should be considered as sufficiently indicative of the gravity of the situation.

The missing Hindu population - a major effect of Enemy (Vested) Property Act

7. According to the Association for Land Reform and Development (ALRD), an NGO based in Dhaka which conducted a comprehensive study on the Enemy (Vested) Property Act in 1997, the implementation of the Enemy (Vested) Property Act has accelerated the process of mass out-migration of the Hindu population since the mid-1960s. The estimated size of the out-migration (the so-called "missing Hindu population") from 1964 to 1991 was 5.3 million, or 538 persons each day since 1964, with as many as 703 persons per day from 1964 to 1971. If these estimates are close to reality, then it would not be an exaggeration to conclude that the Enemy (Vested) Property Act was an effective tool for the removal of the Hindu minorities from their motherland [2]

8. ALRD has estimated the size of Hindu population given a "no out-migration" scenario, on the basis of the following assumptions: (a) between 1961 and 1991 the mortality rates for all religious communities were similar, (b) during the same period the fertility rate among the Hindu population was 13 per cent less than among the Muslim population (estimate based on contraceptive-use rates). According to the information in the population census, the average annual growth rates of the Muslim population was 3.13 per cent for 1961-1974, 3.08 per cent for 1974-1981, and 2.20 per cent for 1981-1991. Assuming a 13 per cent lower fertility rate for the Hindus compared to the Muslims, the average annual growth rates in the Hindu population under the "no out-migration" situation would have been 2.72 per cent during 1964-1971, 2.68 per cent during 1971-1981 and 1.92 per cent during 1981-199[sic]. By extrapolating from these, the Hindu population in 1971 would have been 11.4 million, instead of 9.6 million as reported in the official documents. The Hindu population in 1981 would have been 14.3 million (the 12.5 million of 1981 plus 1.8 million "missing" during 1964-1971), instead of 10.6 million as reported in the 1981 census document. Similarly, had there been no out-migration, the Hindu population in 1991 would have been 16.5 million (12.8 million, as in 1991, plus 3.7 million "missing" during 1964-1981), instead of 11.2 million as reported in the 1991 census document. Thus, the estimated total "missing" Hindu population during 1964-1991 was 5.3 million, i.e. 196,296 Hindus "missing" every year since 1964. In other words, if the out-migration of the Hindu population was caused mainly by communal disharmony resulting from the Enemy (Vested) Property Act, the approximate size of the "missing" Hindu population would be 538 persons each day since 1964.

9. The Hindu minority flee from Bangladesh to neighbouring India after their lands are grabbed by the Government. When people lose their lands, they lose their livelihood. It affects their social security, health, education, standard of living and religious freedom. The Hindus are immediately beset by poverty. Yet, for the last three decades, no Government in Bangladesh has considered repeal of the Act, despite the fact that no Government that believes in equality can justify such a discriminatory law which makes the minority its victims.

10. Holding elections is not the only yardstick for measuring democracy or the health of a society. If gross violation of the economic rights of the Hindu minority is used as a yardstick, tyranny of the majority rules in Bangladesh. Any society which claims to be civil and democratic should have no place for such a discriminatory Act as the Enemy (Vested) Property Act. Repeated calls for its repeal from Hindu religious minority leaders have failed to evoke any response from the Government of Bangladesh.

Notes

[1] M.S. Parishad, The State of Human Rights 1993 - Bangladesh, Dhaka, 1994.

[2] A. Barker et al., Political Economy of the Vested Property Act in Rural Bangladesh, Association for Land Reform and Development, Dhaka, 1997.

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SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

GE.00-10332 (E)

Failure of UNHCR: protection of refugees must come under the Commission on Human Rights

1. The South Asia Human Rights Documentation Centre (SAHRDC) has been concerned about the growing lack of protection for refugees across the world. Protection has not been the key priority for the Office of the United Nations High Commissioner for Refugees (UNHCR).

2. In May 1995, SAHRDC published "The Status of Refugees Under the Protection of UNHCR in New Delhi". The UNHCR office in New Delhi as well as its Geneva headquarters were provided copies of the report for comments. SAHRDC did not receive a written response from either. It was at that time that SAHRDC ended its Partnership in Action (PARinAC) relationship with UNHCR, troubled by the agency's unwillingness to change its approach.

3. Yet, in its 1998 annual report, The State of The World's Refugees: A Humanitarian Agenda, UNHCR cites the condition of the urban refugees in New Delhi as a success story. UNHCR's vocational training programme is highlighted as an attempt to reduce the refugees' dependence on subsistence allowance. UNHCR claims that out of 20,000 urban refugees who received subsistence allowance till 1995, only 2,500 currently require monthly subsistence allowance. The other 17,500 refugees, who are alien to New Delhi, have ostensibly learnt within two years the survival techniques of living in New Delhi. An amazing success story considering the millions of unemployed Indians in New Delhi!

4. But SAHRDC, during its research for the report "Abandoned and Betrayed: The Condition of Afghan refugees", released on 16 November 1999, was not able to find a single refugee who had been granted a work permit by the Government of India. The prohibition on employment of aliens by the Government of India makes it almost impossible for UNHCR to ensure self-sufficiency for the refugees. Since UNHCR is unable to set up hostels and distribute rations in New Delhi because the Government will not provide the necessary land, most of the refugees were given a monthly subsistence allowance. In what can only be described as a zealous attempt to reduce its own subsistence allowance caseload, UNHCR has forced many refugees to accept lump-sum grants. Although UNHCR has organized some vocational training courses, refugees are not legally permitted to work. While it is the perverse logic of UNHCR that has placed the Afghan refugees in this precarious situation, a large part of the blame falls on the Government of India, which has effectively chosen a policy of non-cooperation with UNHCR's efforts.

5. Since SAHRDC published its report in 1995, UNHCR has done little to improve the situation, treating outbursts of protest from refugees by calling the New Delhi police. Nine asylum-seekers who fled from atrocities in Myanmar were arrested under the Foreigners' Act for demonstrating in front of the UNHCR office in 1999. UNHCR has further evaded refugee grievances by delegating many of its core tasks to local NGOs, namely the National Council of YMCAs of India and the Voluntary Health Association of Delhi.

6. Of late, it is apparent that UNHCR is going beyond the call of duty and diplomatic requirements to accommodate the sensibilities of the Government of India. This is most clear in the case of the Afghan refugees. To the Indian policeman who mans the Foreigners Regional Registration Office (FRRO), as well as to the civil servants in the Indian Ministries of

External Affairs and Home Affairs, every Afghan is the Islamic fundamentalist bogeyman. UNHCR is not unaware of this but chooses not to challenge New Delhi's conjuring of the Islamic Fu Manchu, notwithstanding the fact that a sizeable majority of the Afghan refugees were fleeing from and are opposed to the many Islamic fundamentalist armed groups fighting for control of Afghanistan.

7. This paranoia on the part of the Government of India has manifested itself in the recent wholesale denial of residence permits to Afghan refugees by the Ministry of Home Affairs. This decision has effectively turned 60,000 Afghan refugees into illegal migrants, subject to deportation at any time.

8. Now living illegally in India, most of these refugees are wary about travelling outside their own neighbourhoods or continuing outdoor jobs (such as street peddling, the most common profession of Afghan refugees) for fear of extortion or, even worse, deportation at the hands of the Indian police. UNHCR has failed to take any public action on this issue despite few reported cases of deportation.

Problem with the Convention Relating to the Status of Refugees

9. According to UNHCR's mandate and the 1951 Convention, the term "refugee" applies to a person who has fled from his or her country because of a well-founded fear of persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group, and who further cannot, or due to such fear does not, want to return. The 1967 Protocol to the Convention altered this definition only insofar as it removed language which limited it to refugees who had been displaced as a result of events occurring before 1951. This definition reflects the strict individualistic approach to rights discourse which prevailed at the time the Convention and the Statute of the Office were drafted, and as such it excludes from the UNHCR mandate those refugees who could not prove that they were specifically singled out for persecution. The Refugee Convention and its Protocol abysmally failed to address the refugee issues in Asia and Africa.

10. Unlike other treaties of the United Nations like the International Covenant on Civil and Political Rights , the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, where the members of the treaty bodies provide interpretation of various articles, there is no such recognized expert body to interpret the articles of the Refugee Convention and its Protocol. There is no legally binding definition of "fear of persecution" as provided in article 1 of the 1951 Convention. The interpretation of "fear of persecution" which is crucial for determination of refugee status depends on the whims and fancies of the concerned UNHCR legal officer. Consequently, hundreds, if not thousands, have been denied refugee status in New Delhi, not on legal grounds but because of other considerations.

11. UNHCR's Executive Committee (Excom) could have been an appropriate body to deal with such issues. However, the UNHCR Excom is a political body, where State party interests are paramount. Most NGOs invited to the UNHCR Pre-Excom or Excom meetings are humanitarian organizations who do not necessarily have a rights approach. Democratic space for

debate on issues of substance is not available. This lack of debate within UNHCR, its dependence on an archaic convention that does not address the concerns in Asia or Africa, and shifting priorities in tune with the political mood of the major donors, have been responsible for UNHCR's lack of sensitivity to its protection mandate. UNHCR has gradually turned itself into an emergency relief service agency engaged in distribution of blankets and medicines. Protection is no longer on the agenda of the UNHCR in any meaningful manner.

12. It is clear that in the case of the Afghan refugees in New Delhi, UNHCR has failed in its primary tasks, namely the protection of "refugee rights" and the search for "durable solutions". Instead, it has used euphemisms such as "recategorization" and "reorientation" to mask a systematic policy of terminating assistance to refugees and leaving them to fend for themselves in a country where they are unable to pursue any gainful employment. Furthermore, it has done little to shield the refugees from abuses by the Government of India and by society at large in an atmosphere of intense anti-Afghan sentiment.

13. The persistence of these problems and the fact that they have been repeatedly brought to the attention of UNHCR clearly demonstrate the agency's intransigence. Not only has UNHCR failed the Afghan refugees in New Delhi, it has shown little interest in ameliorating the situation over the past five years. SAHRDC firmly believes that it is therefore necessary to create permanent and effective accountability mechanisms to safeguard the dignity and rights of refugees against violations by both the Government of India and UNHCR. It is a sad fact that the very agency originally established to protect and aid refugees can no longer be fully trusted to carry out its task.

14. Many United Nations conventions, including article 3 of the Convention against Torture, provide protection to refugees. Given the widespread abuse of refugee rights and UNHCR's unwillingness to raise issues because of its dependence on invitations from the host country, and the lack of debate within UNHCR, the protection of refugees cannot be solely mandated to UNHCR. The protection of refugee rights must come within the mandate of the United Nations human rights bodies and the Office of the High Commissioner for Human Rights; the Commission on Human Rights must create a separate agenda item, "Protection of refugees" at its fifty-seventh session to enable substantive discussion on this subject.

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INDIGENOUS ISSUES

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

GE.00-10336 (E)

Inaccuracies in the study on treaties, agreements and other constructive arrangements between States and indigenous populations

1. Treaties, agreements and other constructive arrangements with States are immensely important for indigenous peoples all over the world. South Asia Human Rights Documentation Centre (SAHRDC) welcomes the final report (E/CN.4/Sub.2/1999/20) of Mr. Miguel Alfonso Martinez, Special Rapporteur on the "study on treaties, agreements and other constructive arrangements between States and indigenous populations".

2. However, SAHRDC has been concerned about some factual inaccuracies in the report of the Special Rapporteur. In this regard, SAHRDC welcomes resolution 1999/22 on the Promotion and Protection of Human Rights on this subject. The Sub-Commission took note of the critical remarks and observations advanced by a number of organizations and individuals participating in the debates on the Special Rapporteur's conclusions, contained in paragraphs 67 to 92 of the final report, on the relevance of the concept of indigenousness, in the particular context of present-day African, Asian and Pacific States, and requested the Special Rapporteur "to submit to the secretariat, not later than 15 November 1999, the corrections and additions" he considers "necessary to make to the English, Spanish and French versions" of the final report.

3. In paragraph 80 of the report, the Special Rapporteur states that he "has not been in a position to assess all possible overlaps and contradictions of every treaty-related issue and the overall indigenous problematique in the African and Asian contexts". Yet, the Special Rapporteur refers to "cases and situations in which the 'indigenous peoples' category is already established beyond any doubt from a historical and modern day point of view". This observation of the Special Rapporteur is contradictory. The Special Rapporteur also does not elaborate upon the yardsticks he applied in identifying "cases and situations in which the 'indigenous peoples' category is already established beyond any doubt from a historical and modern day point of view".

4. When Governments recognize the presence of indigenous peoples in their countries, it must be concluded that these are cases and situations "beyond any doubt from a historical and modern day point of view". Many countries in Asia recognize the existence of indigenous peoples.

5. In 1997, the Government of the Philippines adopted the Indigenous Peoples Act of 1997. The Government of Malaysia has a specific law, entitled "Aboriginal Peoples Act" of 1967, which recognizes the existence of indigenous peoples. Under article 161 (A) of the Federal Constitution of Malaysia, the peoples of Sabah and Sarawak are recognized as "natives" or indigenous. The Government of Nepal recognizes indigenous peoples in the country and formed a National Committee for the International Year of the World's Indigenous Peoples, 1993 and a National Committee for the United Nations Decade for the World's Indigenous People, 1994-2004. The courts in Japan have recognized the indigenousness of the Ainu. The same was reiterated by the Japanese Parliament in a supplementary resolution to the Act for the Promotion of Ainu Culture, Spread of Knowledge relevant to Ainu Traditions and an Educational Campaign of May 1997. The Government of Bangladesh recognizes indigenous peoples through various legislation like the Chittagong Hill Tracts 1900 Regulation (Act 1 of 1900), Act No. 12 of 1995,

and through correspondence of the Bangladesh National Board of Revenue of 10 March 1980, 9 April 1980, 17 October 1992 and 12 June 1995. The Government of Bangladesh informed the Special Rapporteur on the Study of the Problem of Discrimination against Indigenous Populations (see E/CN.4 /Sub.2/1986/ 7/Add.1), Mr. J. Martinez Cobo, that members of tribal or semi-tribal populations are regarded as indigenous "on account of their descent from the populations which are settled in specified geographical areas of the country". The Prime Minister of Bangladesh, Ms. Sheikh Hasina Wazed, in addressing The Hague Appeal for Peace, the governmental conference commemorating the centennial of the First Hague Peace Conference on 15 May 1999 stated that "the problem of the Chittagong Hill Tracts boils down to the right of an indigenous people". And the constitutionally mandated Scheduled Areas and Scheduled Tribes Commission of India clearly stated in its report of 14 October 1961, much before United Nations started its debate on indigenous peoples, that the Scheduled Tribes are the original inhabitants and internationally they are known as "indigenous" peoples.

6. The Asian Indigenous and Tribal Peoples Network (AITPN) and other indigenous organizations from Asia provided documentary evidence to the Special Rapporteur about the existence of indigenous peoples in the region after the draft final report was submitted during the sixteenth session of the Working Group on Indigenous Populations. Yet, the Special Rapporteur made no changes in the final report. This, despite the fact that the Special Rapporteur, in paragraph 25 of the final report, stated that he "will highly welcome all critical opinions" and that "these contributions will be duly taken into account for potential utilization as additional elements of judgement to be incorporated in the final report before it becomes an official United Nations publication".

7. SAHRDC notes the assertion made in the final report that "The Special Rapporteur is fully aware that he - and only he - is ultimately responsible for the content of the conclusions and recommendations of the present study" (para. 23). This observation raises two specific quandaries. First, once the report on the study on treaties, agreements and other constructive arrangements is adopted by the United Nations Commission on Human Rights, the ownership of the report will be vested in the United Nations. It will legally become an official United Nations publication. It will NOT be considered as a study conducted by an expert in his/her individual capacity. It will be rightly considered as a study of the United Nations. It will be referred to as such and its legal validity and credibility will be completely different from a study conducted by an individual expert in his/her personal capacity. Second, it is the prerogative of any Special Rapporteur to include the critical opinions or observations he/she deems appropriate. However, the Special Rapporteur's prerogative does not include the right to present a factually incorrect report. Facts are sacred while comment is free.

8. SAHRDC is also concerned about the Special Rapporteur's selective approach to colonialism in identifying indigenous peoples. In paragraph 73, the Rapporteur makes a clear distinction "between the phenomena of the territorial expansion by indigenous nations into adjacent areas, and that of the organized colonization, by European powers, of people inhabiting, since time immemorial, territories on other continents".

9. No international law makes any distinction between "territorial expansion into adjacent areas and organized colonization by European States". Article 1 of the United Nations

Declaration on the Granting of Independence to Colonial Countries and Peoples refers to "alien subjugation, domination and exploitation". After the recent referendum in East Timor, the only case which is pending before the United Nations Decolonization Committee is Western Sahara.

10. The recognition of indigenous peoples by countries like Malaysia, a former colony of Great Britain, puts to rest any doubts over "indigenousness" in the post-decolonization period.

11. In paragraph 90, the Special Rapporteur states, "the Special Rapporteur firmly maintains his view that the situations described above, the scenario of which is African or Asian States, should be analysed in other forums of the United Nations than those that are currently concerned with the problems of indigenous peoples, in particular the Working Group on Minorities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities".

12. The observation of the Special Rapporteur that certain peoples qualify "only" as minorities and not as indigenous only adds to the confusion that exists on the fallacious relationship between indigenous peoples and minorities contrary to the practices of the national institutions on minorities and United Nations treaty bodies. "Minority" automatically implies a numerical population whether it is national, ethnic, religious or linguistic.

13. The United Nations Human Rights Committee admitted complaints filed by the indigenous peoples alleging violation of rights under article 27 of the International Covenant on Civil and Political Rights. The judgements of the Human Rights Committee in the case of Sandra Lovelace v. Canada and Ivan Kitok v. Sweden in no way made the Maliseets Indians in Canada and the Samis in Sweden minorities in the sense that they could no longer be considered as indigenous peoples. Moreover, indigenous peoples are not a homogenous category of people themselves. They have different religions, languages and customs. In many States, like Bolivia and Guatemala, indigenous peoples form the numerical majority of the population.

14. It would be unfortunate if the United Nations Commission on Human Rights adopts a report which contains gross factual inaccuracies. If the Special Rapporteur fails to reflect the realities of Asia pursuant to the Sub-Commission resolution, the Commission on Human Rights should extend the mandate of the Special Rapporteur by another year, requesting the Special Rapporteur to include the evidence provided by the indigenous peoples from Asia in his study.